Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN) Pilot Project

Application for Renewal

May 2003
(Amended Oct 2003)

California Department of Health Services

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INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED – CONTINUOUS NURSING PILOT PROJECT

REQUEST FOR SECTION 1915(B) WAIVER RENEWAL

I. INTRODUCTION

The California Department of Health Services (DHS) is requesting renewal of the 1915(b)(3) and 1915 (b)(4) Medi-Cal waiver authorizing continuation of its Intermediate Care Facility for the Developmentally Disabled – Continuous Nursing (ICF/DD-CN) Pilot Project. DHS is requesting renewal of the waiver to allow further evaluation of this new health delivery option.

Chapter 845, California Statutes of 1999 (Aroner AB 359) required DHS to establish a waiver pilot program under Section 1915(b) of the Social Security Act. This statute mandated DHS to explore more flexible models of health care facility licensure to provide continuous skilled nursing care to medically fragile developmentally disabled individuals in the least restrictive setting.

DHS obtained approval from the Centers for Medicare and Medicaid Services (CMS) for a 1915(b)(3) and 1915 (b)(4) waiver in August 2001 in order to establish the ICF/DD-CN Pilot Project. This Pilot Project utilizes the federal Intermediate Care Facility/Mentally Retarded (ICF/MR) model for providing care for those developmentally disabled Medi-Cal eligible consumers who are too medically fragile for care in California's other two subtypes of ICF/MR facilities, Intermediate Care Facility for the Developmentally Disabled-Habilitative (ICF/DD-H) and ICF/DD-Nursing (ICF/DD-N) and therefore would otherwise require care in a subacute facility.

A Pilot Project Committee (PPC) was formed in December 2000 with the responsibility for gathering information and providing a forum for adequate discussion to assure appropriate decisions in setting up the ICF/DD-CN model. The PPC is made up of staff from the following DHS areas: Medi-Cal Policy Division (MCPD), Medi-Cal Operations Division (MCOD), and the Licensing and Certification Program (L&C). Additionally a major participant in the PPC is the California Department of Developmental Services (DDS) who provides consultation directly, as well as indirectly from the state's regional centers. Other entities serving consulting roles are the DHS Office of Legal Services, DHS Medi-Cal Managed Care Division, DHS Payments Systems Division, DHS Audits and Investigation Division, and outside agencies.

Meetings with stakeholders began in December 2000 with participation from various community groups both profit and nonprofit, as well as other state agencies. These meetings explained the proposed program and solicited input.

Attendees, in addition to those representing state agencies included representatives from: California Association of Health Facilities, State Council on Developmental Disabilities, Association of Regional Center Agencies, Protection and Advocacy Inc., and Ramey and Macomber and Associates LLC.

Statewide marketing efforts geared to community groups, prospective providers, California developmental centers and regional centers began immediately after the waiver approval in August 2001. A two-sided tri-fold brochure designed to inform consumers and their representatives of the ICF/DD-CN Pilot Project was developed and sent to consumer advocate groups. Other brochures were similarly designed but geared toward regional centers, potential providers or physicians. (See Exhibits B_1 and B_2). Starting on September 19, 2001, education and training sessions were begun in the regional centers to help various entities in the identification of potential consumers who would benefit from participation in this new type of facility.

All prospective provider applications were received by November 23, 2001. (See Provider Application and Contract, Exhibit C). The PPC and staff from DDS began an extensive review and ranking of the facilities. (See Ranking Criteria, Exhibit D). On December 28, 2001, ten candidate providers were selected and on April 3, 2002, the Pilot began enrolling beneficiaries.

Over the next six months four providers either voluntarily withdrew from participation in the Pilot Project or were terminated by the PPC. Currently the Pilot has six facilities.

Additional time is needed to adequately evaluate whether this new model of care would in fact be a cost-effective and viable alternative for caring for these individuals. All indications are that the care is superior (see Independent Assessment [Exhibit A] and Results of Quality Monitoring Section IV.G).

II. GENERAL DESCRIPTION OF THE WAIVER

A. The State of California requests renewal of the waiver granted in August 2001 under the authority of Sections 1915(b)(3) and 1915(b)(4) of the Social Security Act for the continuation of its ICF/DD-CN Pilot Project. The program will continue to be administered by DHS, the Medicaid single state agency.

B. Effective Dates: This waiver renewal is requested for a period of two years, August 17, 2003 through August 16, 2005.

C. The waiver program is called: Intermediate Care Facility for the Developmentally Disabled-Continuous Nursing (ICF/DD-CN) Pilot Project.

D. Geographical areas of the waiver program: No specific geographical areas were/are required for participation. Pilot facilities are currently located in the

San Francisco bay area, the Los Angeles area, the central valley area and the southern desert area.

E. The State contact person for this waiver is the chief of the Freedom of Choice Waiver Unit at the Department of Health Services, who can be reached at (916) 552-9632.

F. Statutory authority: The State's waiver program is authorized under Section 1915(b)(3) of the Social Security Act, which states that the State will share cost savings resulting from the use of more cost effective medical care with enrollees by providing them with additional services. The savings must be expended for the benefit of the enrolled Medicaid beneficiary. The ICF/DD-CN waiver program is also authorized under Section 1915(b)(4) of the Social Security Act, which states that providers of waiver services must meet, accept, and comply with the reimbursement, quality, and utilization standards under the State Plan. Such standards shall be consistent with the requirements of Section 1923 of the Social Security Act, and be consistent with access, quality, and efficient and economic provisions of State Plan covered care and services.

   Other statutory authority the State is relying on: California Welfare and Institutions (W & I) Codes §14110.55, §14133.12, and §14495.10.

G. Sections waived: Relying on the authority of the above, the State requests renewal of a waiver of the following sections of 1902 of the Social Security Act:

   1. Section 1902(a)(1) – Statewideness. This section of the Social Security Act requires a Medicaid State Plan service to be available in all political subdivisions of the State.

      Because this waiver is a pilot program, services of an ICF/DD-CN are not available in all parts of the State.

   2. Section 1902(a)(10)(B) – Comparability of Services. This section of the Social Security Act requires all services for categorically needy individuals to be equal in amount, duration, and scope.

      This waiver program will be implemented in a maximum of ten community facilities. Therefore, services provided under this waiver are not available to all categorically needy individuals within the State.

   3. Section 1902(a)(23) – Freedom of Choice. This section of the Social Security Act requires the Medicaid State Plan to permit all

individuals eligible for Medicaid to obtain medical assistance from any qualified provider in the State.

Under this waiver program, free choice of providers is limited to the specific health facilities that are selected to participate in the pilot program.

H. Recipient Figures: Total recipients will not exceed 60 during the waiver period.

I. Waiver Populations - All consumers participating in the ICF/DD-CN Pilot shall meet all of the criteria specified in Section III.A.

J. Excluded Populations – Consumers not meeting the qualifications specified in Section III.A. are excluded from the Pilot.

K. Independent Assessment: The ICF/DD-CN Pilot Project was independently evaluated during the original waiver period, in April 2003, as required (see Exhibit A for the complete Independent Assessment for waiver period 2001/2003). The State will arrange for another Independent Assessment during the waiver renewal period and submit the results at least 90 days prior to the renewed waiver expiration date.

L. Automated Data Processing: The State will comply with the federal automated data processing requirements as described in 42 Code of Federal Regulations (CFR) Part 433, Subpart C, 45 CFR Part 95, Subpart F, and Part 11 of the State Medicaid Manual.

III. PROGRAM IMPACT

A. Affected Recipients - Consumer referrals are primarily from the regional centers. (See “Role of the Regional Centers” Section IV.C.). The target population includes individuals residing in developmental centers, subacute, and acute care facilities. Consumers cared for in an ICF/DD-N or skilled nursing facility may be considered for this Pilot, provided their level of care is documented to meet the criteria established to participate in the Pilot and they preserve cost neutrality as described below. Consumers participating in the ICF/DD-CN Pilot shall meet all of the following criteria:

1. Medi-Cal program eligibility. Consumers enrolled in managed care health plans are not eligible to participate in the Pilot Project.
2. Certified by the regional center as developmentally disabled as defined by W & I Code §4512 and eligible for special treatment programs.

3. Enrolled in the regional center.

4. Medical necessity for continuous skilled nursing care and observation as specified in Section III.C.

5. Be free of clinically active communicable disease reportable under Title 17, California Code of Regulations (CCR) §2500.

6. Have an Acknowledgment of Participation Document completed and on file. This form will be completed by the consumer or conservator/legal guardian. (See Exhibit E)

7. Enrollment must not negatively impact the cost effectiveness of the waiver as defined by the following: The total costs of the waiver, including program benefits and administrative costs, must not be greater than the cost of providing like services without the waiver.

B. Consumer Placement

1. As vacancies occur within the ICF/DD-CN facility, the provider shall contact the regional center in their geographical area for potential candidates meeting the eligibility criteria for admissions.

2. The regional center and the referring entity, e.g. developmental center, subacute center, etc, along with the ICF/DD-CN provider, will work together to identify the appropriate consumers for placement in the ICF/DD-CN facility.

3. Consumer placements in the ICF/DD-CN facility shall not be used for the purpose of respite.

4. Consumers placed in an ICF/DD-CN facility become the responsibility of the provider and must be admitted in accordance with the provider's written policies and procedures.

5. The ICF/DD-CN provider will notify MCOD before a new consumer has been admitted and when a consumer is discharged.

6. The provider shall submit a Treatment Authorization Request (TAR) for all consumer services provided under the ICF/DD-CN Pilot from the date of admission.

7. There must be a bed available in one of the ICF/DD-CN Pilot facilities.

8. Consideration of the effect on cost neutrality of the Pilot (as described in Section III.A.7.) must be considered.

9. Waiver services will be terminated at the conclusion of the Pilot Project. At that point in time, the PPC will ensure that all consumers placed in an ICF/DD-CN will be provided the choice of alternate placement or services funded by the Medi-Cal program that meet Medi-Cal requirements and that are appropriate to the consumer's level of care, medical, and other needs. DHS will coordinate with DDS, regional centers, consumers and/or their representatives to determine appropriate placement services at the conclusion of the Pilot. All provider and consumer rights under the State Plan, consistent with all applicable state and federal laws and regulations, will be followed.

C. Services - The ICF/DD-CN level of care is intended to reimburse for continuous skilled nursing services, which are not available in either ICF/DD-N or ICF/DD-H facilities. This Pilot Project is studying the feasibility of providing ICF/DD-CN services in small community-based residential settings based on the ICF/DD-N and ICF/DD-H models. Because of the presence of 24-hour skilled nursing, the ICF/DD-CN facility is able to provide medical and nursing care and support, either predictable or unpredictable, to those consumers who would otherwise be placed in a large institutional setting. In addition to meeting the consumer's health care needs, the ICF/DD-CN is intended to provide developmental training, habilitative services and active treatment to facilitate decreased dependence on others in carrying out activities of daily living, prevention of regression, and amelioration of developmental delay.

1. General Services – All services outlined in the State Plan for California's ICF/DD-N facilities will be provided. ("State Plan Under Title IX of Social Security Act, State: California, Reimbursement for all Categories of Nursing Facilities and Intermediate Care Facilities for the Developmentally Disabled").

2. Additional Services Provided to Pilot Beneficiaries

    a. Continuous (24-Hour) Skilled Nursing
        i. Sufficient Registered Nurse (RN) and Licensed Vocational Nurse (LVN) staffing to allow a minimum of five hours per consumer per day of non-duplicated skilled nursing with a minimum of two hours of the five hours per consumer per day being non-duplicated RN staffing. All LVN staffing must be supervised by an RN who is available by telephone at all times.
        ii. A minimum of one RN or one LVN awake and in the facility at all times.

iii. All staff rendering direct care must maintain currently required, unrevoked licenses and certifications and must receive on-going training specific to the Pilot population being served.

b. Ventilator Care
c. Tracheotomy Care
d. Oxygen Delivery / CPAP
e. Suctioning
f. Continuous IV Therapy
g. Total Parenteral Nutrition
h. Medication Administration
i. Decubitus Care Stage III and Above
j. Other Skilled Nursing Services

3. The following defines the minimum clinical criteria necessary for authorizing ICF/DD-CN services:

   a. Consumer's condition has stabilized to the point that acute care is not medically necessary; ***and***
   b. Consumer's condition warrants twenty-four hour nursing care by a licensed nurse which would be inclusive of nursing assessment, interventions with documented outcomes; ***and***
   c. Any one of the following items:
      i. A tracheotomy with dependence on mechanical ventilator;
      ii. Dependence on a tracheotomy that requires nursing intervention such as medication administration, suctioning, cleaning inner cannula, changing tracheotomy ties or tube care;
      iii. Continuous or daily intravenous administration of therapeutic agents, hydration, or total parenteral nutrition via peripheral or central line;
      iv. Peritoneal or hemodialysis;
      v. Decubitus ulcer care stage three and above or skin care that requires frequent nursing observation and intervention with substantiating documentation;
      vi. Chronic instability of medical condition occurring daily or more often and requiring skilled nursing assessment and subsequent nursing intervention, ***or***
   d. Administration of two treatment procedures listed below:
      i. Nasal or oral suctioning at least every eight hours and room-air mist or oxygen any part of the day;

ii. Tube feeding either continuous drip or bolus every shift
iii. Five days per week of inpatient physical, occupational, or speech therapy, singly or in combination, provided directly by or under the direct supervision of a licensed therapist.

D. Applicant and Current Pilot Provider Requirements - Currently there are six facilities participating in the Pilot Project. If additional facilities are added, they must submit applications, which are then reviewed by the PPC. This section lists the mandatory requirements for all participating providers and applicants.

1. Applications for Participation as an ICF/DD-CN Provider – All applications must include:

a. Documentation assuring that the provider meets all requirements for participation as specified in this document.
b. Agreement that all consumers residing in the facility will meet waiver requirements, for the duration of the Pilot Project. If, at any time during the period of the Pilot, a consumer no longer meets waiver requirements, the facility agrees to facilitate relocation of the consumer to appropriate alternate placement and to notify L&C as described in Title 22 CCR §73852.
c. Assurance that the provider will ensure that the health care and developmental needs of the consumers are met, and that all state and federal laws and regulations are followed.
d. Provider is responsible to assess, train and monitor nurses to assure they are skilled in providing care to this population.

2. Requirements for Facility Participation in the Pilot Project - All of the following requirements must be met prior to the applicant facility being selected for participation in the Pilot:

a. Conditions for licensure as an ICF/DD-N. This requirement is necessary to ensure that the applicant can meet the basic statutory and regulatory requirements for providing services to the developmentally disabled consumer with nursing needs. At the time of application, the applicant facility may be in any of the following categories:
i. ICF/DD-N that will be converted to an ICF/DD-CN.
ii. Other licensed health facility that will be converted to an ICF/DD-CN.

iii. An owner of an ICF/DD-N or other licensed health facility that wishes to open a new licensed facility for the purpose of waiver participation (for example, a corporation).

b. The applicant facility must demonstrate historical ability to comply with state licensing and federal ICF/MR certification requirements as evidenced by:
   i. Compliance and competence in meeting applicable state licensing and federal certification requirements during the previous three years; or
   ii. If the applicant facility has been licensed for less than three years, the licensee (or corporation) must be able to demonstrate compliance and competence in meeting applicable state licensing and federal certification requirements at other health facilities operated by the licensee (or corporation) during the past three years.

c. The applicant must demonstrate all of the following, as determined by a DHS Licensing and Certification survey:
   i. Physical Plant - All applicants/providers must:
      - Meet all requirements of the federal ICF/MR Conditions of Participation (COP), Physical Environment (42, CFR §483.470[a][1] through [k][2]).
      - Provide auxiliary lighting and power sources to operate all functions of the facility for a minimum of eight hours. The auxiliary system must be maintained in safe operating condition.
      - Ensure that all portable equipment using 110-120 volt current is equipped with three wire grounded U.L. (Underwriters Laboratories) approved power cords and three-pronged cords.
      - The facility must have:
        - Designated clean and dirty utility areas.
        - Wheelchair and portable medical equipment accessible hallways, doorways, entrances, and exits.
        - Comfortable usage of furnishings to promote ease of nursing care and to accommodate the use of assistive devices, including but not limited to, wheelchairs, walkers, and patient lifts, when needed.

- No more than two clients per bedroom.
- Adequate space to avoid using bedrooms as a through passageway to another room, bath, or toilet.

ii. Staffing - All applicants must be able to accommodate consumers with 24-hour skilled nursing needs. At a minimum, these include all of the following:

- Sufficient Registered Nurse (RN) and Licensed Vocational Nurse (LVN) staffing to allow a minimum of five hours per consumer per day of non-duplicated skilled nursing (RN and/or LVN) with a minimum of two hours of the five hours per consumer per day being non-duplicated RN staffing. All LVN staffing must be supervised by an RN who is available by telephone at all times.
- A minimum of one RN or one LVN awake and in the facility at all times.
- All staff rendering direct care must maintain currently required, unrevoked licenses and certifications and must receive on-going training specific to the Pilot population being served.

iii. Equipment and Supplies - The applicant must:

- Have a designated storage area that is adequate for needed medical equipment and supplies.
- Maintain a seven-day supply of all medical equipment and supplies necessary to meet client needs.
- Calibrate all gauging and measuring equipment on a regular basis, as specified by the manufacturer, and maintain records of the testing.
- Have a written manual pertaining to the use, care, cleaning, and maintenance of client care equipment and supplies, including but not limited to:
  - Enteral feeding pumps
  - Mechanical lifts
  - Ventilators and related equipment
  - Oxygen delivery systems
  - Positive airway pressure equipment

- Suction machines
- Electric beds
- Electric chairs
- Intravenous infusion pumps
- Monitoring equipment

- Have sufficient medical gas storage to allow 24-hour per day ventilator operation for all consumers who are ventilator-dependent.
- Have a back-up ventilator for emergency use when there are ventilator-dependent consumers in the facility.

3. Denial of Provider Application - An application for participation as a Pilot Project provider may be denied if any one of the following conditions exist in the applicant facility:

   a. Inability to meet the same federal COP for the past three consecutive re-certification surveys.
   b. Condition level non-compliance with the federal COP for Health Care Services during the past 12 months.
   c. Existence of a time limited federal certification agreement of less than 12 months due to programmatic deficiencies.
   d. During the past 12 months, the applicant facility has received any Class AA, Class A, or Class B citations, as defined by California Health and Safety Code, §1424(d) and §1428(h) that pertain to patient care. The presence of a Class B citation shall not, in itself, constitute the basis for denial. A Class B citation shall be evaluated for its impact on such areas as client care, client safety, fraud, and for indications of a pattern of noncompliance.
   e. Any other condition or situation that indicates the applicant facility's inability to ensure the health and safety of its residents, as determined by the PPC.

4. Applicant Appeals – An applicant may request PPC reconsideration of the denial of their application to be a Pilot Project provider. This request shall be in writing.

5. Provider Reporting Requirements

   a. The provider shall maintain program cost reports associated with the operation of the ICF/DD-CN facility and shall be responsible for reporting all program income received for reimbursement of program services to MCPD on a quarterly basis.

b. The provider shall maintain records and provide information such as Special Incident Reports, Complaints, and Grievances as determined by the PPC to be necessary for evaluation of the Pilot.

6. Waiver Provider Technical Assistance - DHS will provide technical assistance to providers as needs are identified or requested.

7. Termination of Facility Participation in the Pilot Project **-** A provider may be terminated from participation in the Pilot Project if any one of the following conditions is found to exist at the ICF/DD-CN facility:

   a. Failure to meet waiver requirements as specified in this document.
   b. Failure to maintain ongoing compliance with the licensing requirements of an ICF/DD-N or the federal COP.
   c. Any other condition or situation that indicates the ICF/DD-CN facility's inability to ensure the health and safety of its residents, as determined by L&C.

8. Facility Voluntary Termination of Services – A facility wishing to withdraw from the Pilot may do so as described in Title 22 CCR §73852.

IV. PROGRAM ADMINISTRATION / ACCESS TO CARE AND QUALITY OF SERVICE

A. The Department of Health Services – DHS is the single state agency charged with the administration of the Medi-Cal Program. The following describes the roles of the DHS entities that are involved in ensuring Pilot

Project consumers are placed appropriately, receive the appropriate services based on their plan of care and are safe in the ICF/DD-CN setting:

1. Role of the Medi-Cal Policy Division – MCPD is responsible for the coordination and oversight of all ICF/DD-CN administrative activities which include:

    a. Serving as key liaison to CMS.
    b. The planning, organization, coordination and facilitation of the PPC meetings, including the preparation of agendas and minutes.
    c. Oversight of the review of Applications of Participation and final designation of facilities as waiver facilities.
    d. Maintenance of records associated with the Application of Participation.
    e. Oversight and maintenance of records of complaints and problems identified with individual facilities or consumers referred to the PPC, and their outcome.
    f. General oversight to ensure compliance with all federal and state laws and regulations, as well as waiver requirements.
    g. On-going liaison with Pilot facilities, regional centers, DDS and advocacy groups regarding the waiver.
    h. The preparation and submission of annual reports to CMS regarding quality of care, access to care, and cost neutrality of the waiver.
    i. The procurement, coordination and oversight of the Independent Assessment contractor.
    j. Oversight of payment services through the Electronic Data Systems (EDS) and preparation of post-payment data/reports by EDS. Working with the provider and Payment Systems Division (PSD) to resolve billing and payment issues.

2. Role of the Medi-Cal Operations Division – MCOD is assigned the responsibility of Medi-Cal utilization review via adjudication of TARs for waiver services provided in an ICF/DD-CN, as well as the implementation of the MCOD monitoring and oversight process. MCOD's monitoring activities include working collaboratively with L&C, DDS, regional center representatives, and independently to assess the implementation of the Pilot Project in accordance with applicable state statutes as well as the waiver requirements (including cost neutrality of care, when considering new admissions into the CN facilities), to ensure the provision of appropriate and quality services to the consumer. MCOD responsibilities shall include:

a. Utilization review and adjudication of the TARs with consideration of the waiver's cost neutrality requirement.
b. Onsite monitoring reviews to assess the consumer's plan of care, ensure all care needs are met, and that the consumer is continuing to meet the CN level of care. The reviews should include documentation of consumer integration into the community such that their quality of life is improved.
c. Monitoring of facilities to ensure compliance with the participation agreement, as well as waiver requirements. Any potential L&C problem identified will be referred to L&C for investigation within two working days.
d. Reporting of findings to the PPC on an ongoing basis.
e. Referral of any fraud issues identified during monitoring reviews, to DHS Audits and Investigations.
f. Responsible for the issuance of "Notices of Action" as required by Title 22 §50179
g. Maintaining records associated with the authorization of services, including level of care determination, the plan of care, TARs and associated documentation, and monitoring reviews.

3. Role of the Licensing and Certification Program – L&C has the responsibility for the following:

a. The determination that those facilities newly participating in the Pilot meet the conditions for licensure as an ICF/DD-N at the time of application and on an on-going basis. Such determination ensures that basic plant and staffing requirements, as well as the facility's capacity to meet the consumer's medical, nursing and other needs, as delineated in the plan of care, are met.
b. Thereafter, on a quarterly basis, L&C representatives directly observe and evaluate the care and treatment provided to consumers, staff competency, and the quality of nursing oversight to ensure compliance with all regulations and statues. This includes an evaluation of the ICF/DD-CN's ability to maintain compliance with the licensing requirements of an ICF/DD-N as well as the additional requirements identified in this document, the requirements as identified in the Pilot, and the federal COP requirements for an ICF/MR facility. L&C reviews the facility compliance with the COP on an annual basis, in the form of a "Fundamental Survey".
c. L&C designates staff to respond, as required, to reported events/complaints and to - investigate facility problems identified by any other entities. The timeframes are based

on the severity of the complaint, as defined in the table below:

Problem Investigation Time Requirement	
Immediate and Serious	Not Immediate and Serious
A situation in which Pilot facility's practice has caused, or is likely to cause, serious injury, harm, impairment, or death to a client. <u>Within Two Working Days.</u>	Any concern, or alleged failure by the facility to comply with any Pilot waiver requirement. <u>Within Five Working Days.</u>

d. L&C's findings and recommendations are reported to the PPC. L&C shall retain the results of all investigations. Copies of all investigations will be made available as needed to any concerned parties as per L&C policy and procedure. Copies of all monitoring and survey reports shall be distributed as follows:

i. Original report to the coordinator of the Pilot Project at L&C headquarters.
ii. One copy retained in the facility file of the local L&C District Office.
iii. One copy for each identified member of the PPC.
iv. One copy to the facility
v. One copy to the identified regional center case manager

Requests for additional copies will be determined at the discretion of the L&C Pilot Project coordinator. Confidentiality of all documents will be maintained at all times

B. Role of the Department of Developmental Services – DDS Community Operations Division, Residential Services Branch and Regional Center Branch are responsible for providing leadership and direction to ensure that individuals with developmental disabilities have the following: the opportunity to make choices about their own lives, to be safe, to lead more independent, productive and happy lives, and to receive appropriate health care. DDS is participating in the development and implementation of the ICF/DD-CN waiver and provides general oversight through the regional centers, which provide direct case management services. In addition, DDS has the following responsibilities:

1. Monitoring and oversight of the regional centers in relation to waiver services, including on-site regional center quarterly monitoring, and providing trend analysis of special incident reports to the PPC on a quarterly basis.

2. Communication of information and/or issues raised by the regional centers to appropriate DHS representatives, as well as coordination of information from DHS to the regional centers.

3. Participation in the ICF/DD-CN PPC in a consultative role.

4. Participation in waiver training and technical assistance to providers, consumers, regional centers, or other entities as necessary.

C. Role of the Regional Centers - The regional centers have the responsibility for the evaluation and certification of developmental disability and eligibility for special treatment programs (documented with completion of the Health Services HS 231 Form, Exhibit F). For the purpose of this Pilot, the regional centers will retain the responsibility for completing the HS 231 Form and current Individual Program Plan (IPP) nursing evaluation and assessment, and will provide the information to the waiver provider for submission with the TAR. In addition, regional centers will maintain all of their current responsibilities for:

1. Service provision to individuals with developmental disabilities.

2. Case management responsibilities as it does for residents of ICF/DD-N facilities. Such case management ensures appropriate placement, monitoring of the plan of care, and the receipt of appropriate services by the consumer. Regional centers will also maintain their authority and responsibility to relocate consumers should it appear they are at risk in the ICF/DD-CN or if such placement appears to be inappropriate at any time, for any reason.

3. Identification and prior referral to MCOD of consumers appropriate for placement.

4. Service delivery monitoring as required by W&I Code §4648.1(a).

5. Maintaining all records associated with developmentally disability certification, case management, and monitoring activities, including the plan of care.

D. Role of the Pilot Project Committee –The PPC is made up of staff from the following DHS areas: MCPD, MCOD, and L&C. Other DHS entities serving

consulting roles are the Office of Legal Services, Medi-Cal Managed Care Division, Payments Systems Division and Audits and Investigation Division. A major participant in the PPC in a consultative role is the California Department of Developmental Services. Additionally outside agencies such as the Association of Regional Center Agencies contribute in a consulting role. While DHS retains the authority of the single state agency to make all final decisions, the PPC is responsible for providing a forum for adequate review to assure appropriate decisions. The PPC convenes monthly or as necessary for various monitoring and oversight activities which include but are not limited to the following:

1. The review and deliberation on any new provider applications

2. The review and deliberation on the imposition of adverse actions, such as termination of pilot facility status.

3. The review of L&C/MCOD findings

4. The review of Special Incident Reports, Complaints, and Grievances.

E. Health and Safety Issues – Safeguards have been put into place to protect the health and safety of the consumers receiving waiver services, as well as to ensure the adequacy and appropriateness of services provided. Specifically, such safeguards include consideration of:

1. Facility compliance with licensing requirements for an ICF/DD-N, as well as compliance with all waiver requirements.

2. Appropriate placement of the consumer.

3. Development of an appropriate plan of care.

4. Provision of timely and appropriate services as delineated on the plan of care (both preventative and treatment services).

5. Evaluation and re-evaluation of the consumer at appropriate intervals.

6. Appropriate staffing resources in the ICF/DD-CN facility to ensure both ongoing care, and care required during periods of increased need and in emergencies.

7. Appropriate equipment (including back-up equipment and supplies) to ensure ongoing care, as well as care required during periods of increased need and in emergencies.

8. Sufficient facility resources to maintain the facility in a safe and workable condition on a daily basis as well as provisions for caring for the consumers in times of crisis or emergency.

9. Assurance that applicable federal and state laws and regulations will be adhered to.

F. Complaints, Grievances, Appeals and Fair Hearings

1. Complaints and Grievances – Complaints and grievances may be investigated by the person or entity receiving them, or they may be referred to the PPC for assistance. Reported complaints and grievances, including action, if any, shall be reported to the PPC. Such complaints and grievances shall be logged by the appropriate party and reviewed periodically for progress in resolution.

2. Appeals – Appeals are defined as one of the following:

   a. A request by an applicant facility to reconsider the decision to deny the application to be a waiver provider. This type of appeal shall be referred to the PPC for consideration.
   b. A request by a waiver provider to reconsider a denial of all or part of a TAR for reimbursement for ICF/DD-CN services. This type of appeal shall follow the established appeal process as specified in Title 22, CCR §51003(g).

3. Fair Hearings – Fair hearings are defined as a request by the Medi-Cal beneficiary to reconsider a denial of all or part of a TAR for ICF/DD-CN services. Fair hearings shall follow the established process, as specified in Title 22, CCR §51014.1 and §51014.2, including notification. W & I Code §4710 through §4716, and Title 17, CCR §52172 through §52174, as appropriate, shall be utilized when a fair hearing is requested due to issues other than the denial of a TAR.

G. Results of Quality Monitoring Survey – In February 2003, targeted satisfaction surveys were sent to individual consumers' representatives, their medical providers, regional center case managers and facility administrators. (See Exhibit G_1, G_2, G_3 and G_4). Although the survey results were overwhelmingly positive in most cases, the providers particularly expressed concerns in two areas: the enhanced monitoring of the facilities and the lack of a mechanism during the monitoring/surveying

process for general care questions. These comments have been taken into consideration in making changes for the waiver renewal period.

H. Reimbursement Process - Upon selection as a waiver provider, the ICF/DD-CN facility will be enrolled in the Medi-Cal program and issued a provider identification number to allow billing for services. The process by which a waiver provider requests authorization for reimbursement of ICF/DD-CN services consists of all of the following:

1. Submission of a completed TAR to MCOD at the following address (directions for completion of the TAR may be found in the Medi-Cal provider manual):

   Department of Health Services
   Community Options Monitoring and Assessment Unit
   1501 Capitol Ave, MS 4502
   PO Box 942732
   Sacramento, California 94234-7320

2. The TAR shall be accompanied by all of the following information:

   a. Completed HS 231 Form that states that the consumer meets the ICF/DD-CN level of care.
   b. A current regional center nursing assessment identifying the need for 24-hour skilled nursing, monitoring, and intervention.
      i. For the initial TAR request a current facility RN pre-admission assessment identifying the continuous skilled nursing care needs.
      ii. For reauthorization requests, a current monthly RN assessment.
   c. Current MD orders.
   d. Any other medical documents to support the level of care for CN services as requested by MCOD.

3. Each approved TAR for ICF/DD-CN services will be for a period not to exceed 180 days.

4. If all or part of the request for authorization is denied, both the provider and the consumer have appeal rights. These rights are established under Title 22 CCR §51003(g).

5. Waiver services shall be denied/terminated for individual consumers when one or more of the following occurs:

   a. The consumer loses Medi-Cal eligibility.

b. The consumer becomes enrolled in a managed care plan.
c. The consumer is under the age of 21, becomes enrolled in a managed care plan and is California Children's Services (CCS) eligible.
d. The consumer or his/her legal representative elects, in writing, to terminate services.
e. The consumer wishes to move from the geographical area within which the waiver services are available or wishes to move into another area where there are either no Pilot providers, or no available beds at a waiver facility.
f. The consumer's condition changes such that he/she no longer meets waiver requirements for ICF/DD-CN services.
g. The facility is terminated as a waiver provider and alternate waiver providers are not available.
h. The consumer is no longer enrolled in the regional center.
i. The facility is unable to meet the consumer's needs placing the consumer's health and welfare at risk.
j. The consumer's care no longer meets the cost neutrality requirement of the waiver.

6. In the event any of the conditions outlined in Number 5 above exist, the consumer and/or his/her legal representative will be informed by the regional center of the available placement options/services appropriate to the consumer's level of care, medical, and other needs. The regional center retains the responsibility for identification of, and arrangements for, alternate placement/services.

V. COST EFFECTIVENESS

A. GENERAL Cost effectiveness under the Pilot is shown from August 17, 2001 through August 16, 2003 (the past two years under the Pilot) and projected from August 17, 2003 through August 16, 2005 (the renewal period). Costs are annualized and shown by waiver year (WY).

Waiver Years

Year One of the Current Waiver	The last 10.5 months of State Fiscal Year (SFY) 2001/2002 and the first 1.5 months of SFY 2002/2003 (August 17, 2001 through August 16, 2002)
Year Two of the Current Waiver	The last 10.5 months of SFY 2002/2003 and the first 1.5 months of SFY 2003/2004 (August 17,2002 through August 16, 2003)
Year Three of the Waiver (Renewal Year One)	The last 10.5 months of SFY 2003/2004 and the first 1.5 months of SFY 2004/2005 (August 17,2003 through August 16, 2004)
Year Four of the Waiver (Renewal Year Two)	The last 10.5 months of SFY 2004/2005 and the first 1.5 months of SFY 2005/2006 (August 17,2004 through August 16, 2005)

B. METHODOLOGY AND CALCULATIONS USED TO DETERMINE PAST COSTS AND FUTURE COST-EFFECTIVENESS FOR THE ICF/DD-CN PILOT PROGRAM

Definition of Terms, Abbreviations and Methodology

Acute	Acute Care Hospital
Admin (Non-Waiver)	To determine WOW administration expenses, the rate for State oversight of the facility-of-origin was used. This was calculated by using the average Health Facility Evaluator Nurse (HFEN) hours spent overseeing care in the ICF/DD-Ns, SNFs and sub-acute facilities. (An HFEN is equivalent to an NE II for purposes of personnel year [PY] expenses and training.) We based the calculations on the current PY rate of $27.65 for an HFEN / NE. Only two WOW administration rates were used for calculation; one for ICF/DD-Ns and one for SNFs, sub acute, acute, and DC facilities. This was based on the assumption that the administrative oversight of SNFs, sub-acute facilities, etc was similar in that the expense was distributed over a fairly large beneficiary census (60+ versus the small 6-bed ICF/DD-Ns).
Admin (Waiver)	Six full-time positions were originally allocated by the legislature in January 2001 in order to set up and administer the Pilot. Those positions were: one (1) Staff Services Manager 1 (SSM I), two (2) Associate Governmental Program Analysts (AGPA), and three (3) Nurse Evaluator 2 (NE II). (See later in this section for a definition of their duties and breakdown of their PY rates.) Since the staff allocated in each waiver year were assigned full time to the program, we used PY rates for computing administrative expenses. Later, as described below in WY 3, the staff was

	cut to four full time positions and with the projection of additional facilities for WY 4, we assumed another half-time NE II position in computing administrative expenses in that year.
Adult SA	Adult Sub-Acute Facility
Base (Non-Waiver)	Non-Waiver Base Cost: This was determined by using established Medi-Cal reimbursement rates for the level of care and prior institution where the beneficiary originated. (See Section E for institutional Medi-Cal reimbursement rates). The rates used were the weighted averages for these institutions effective 8/1/02 for WYs One & Two and effective 8/1/03 for WYs Three & Four.
Base (Waiver)	Waiver Base Cost: This was determined by using the established per consumer reimbursement rates for the ICF/DD-CN (Pilot) facility. Two base rates were established for consumers enrolled in the Pilot depending on whether the consumer was ventilator-dependent or not. (See Section D for the methodology used to determine the two ICF/DD-CN rates). All ICF/DD-N services plus the additional services outlined in Section C would be included in the ICF/DD-CN facility rates. Costs for services that were not included would be reimbursed as State Plan (SP) costs.
COL	Cost of Living: No COL increases were added until WY Four (Second year of the renewal). Beginning in WY Four, rates were increased based on an estimated 3.6% inflation. This inflation percentage reflects a blended rate of the Medical Component of the Consumer Price Index and the Home Health Agency Market Basket Index. However, during California's fiscal uncertainty, it is unlikely that a rate increase will be forthcoming.
DC	Developmental Center
ICF/DD-N	Intermediate Care Facility/Developmentally Disabled-Nursing
Non Waiver Costs	Non-Waiver Costs: All known (based on paid claims data) or expected costs of caring for the beneficiaries prior to their enrollment in the Pilot, or expected costs for the beneficiaries if they were not enrolled in the Pilot and were receiving similar services in another institution. In all waiver years, Non-Waiver Costs were calculated by adding the institutional base rate, plus the State Plan Services costs, plus the estimated administrative costs (defined above).
Ped SA	Pediatric Sub-Acute
SFY	State Fiscal Year (July 1 through June 30)
SNF	Skilled Nursing Facility
SP	State Plan Services: All costs for services that are reimbursed under the State Plan but not included in the base rate for either the beneficiary's prior institution or the Pilot facility. The SP costs were calculated for WY One and WY Two by using SFY 2001/2002 known paid claims data (date-of-service) when available. Costs were assumed based on this historical data when there was a lag in data processing in WYs One & Two and also for future projections in WYs Three & Four.
Waiver Costs	Waiver Costs: All known or assumed costs for caring for the beneficiaries enrolled in the Pilot. In all waiver years, Waiver Costs were calculated by adding the base rate, plus the State Plan Services costs, plus the estimated

	administrative costs (defined above) for enrolled beneficiaries.
WY	Waiver Year

WAIVER YEAR ONE – (See Table A) Table A uses known costs (paid claims data based on date-of-service) as much as possible. Some costs were estimated due to a lag in, or unavailability of data. The first waiver year did not have enrolled beneficiaries until April 3, 2002 and therefore all costs, including Admin Costs were based on the shorter time period. Six beneficiaries enrolled in April, with five of them originating from an ICF/DD-N facility and the sixth originating from an acute hospital neonatal intensive care unit. Another six beneficiaries enrolled in June 2002, all originating from an ICF/DD-N facility. The final two weeks of WY One had two beneficiaries enroll, both from SNFs (Skilled Nursing Facilities). This brought the total enrollment in WY One to 14 and total Waiver Costs to $930,862. Contrasted with estimated Non-Waiver Costs for WY One, the Pilot showed a $413,309 negative balance. This was not unexpected due to start up costs and the fact that a majority of beneficiaries originated from ICF/DD-N facilities with a lower cost base. (It should be noted, however, that the beneficiaries who originated from ICF/DD-Ns were in fact receiving a higher level of care in the "N" than is normally received in that type of facility).

Table A - WY One

Non-Waiver			
Base	SP	Admin	Total
$313,645	$194,824	$9,084	$517,553

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$412,301	$157,733	$360,828	$930,862	($413,309)

WAIVER YEAR TWO – (See Table B) In WY Two, the Pilot added four beneficiaries from sub-acute facilities (one of whom was only enrolled for one month before returning to a higher level of care), five beneficiaries from developmental centers, five more from ICF/DD-Ns and one arrived in March 2003 from an acute facility to replace a beneficiary that was stabilized sufficiently to go home. Even though the Pilot gained beneficiaries from higher cost centers, it failed to show cost effectiveness in the second waiver year due to the continued influence of beneficiaries from the lower cost center (ICF/DD-Ns) and the fact that many of the beneficiaries from the higher cost centers did not arrive until late in the waiver year (January, February and March). As shown in Table B, the negative balance in WY Two was $586,302. Below describes the breakdown for facility of origin in WY Two.

Beneficiaries' Facilities of Origin WY Two

SNF	ICF/DD-N	DC	Adult SA	Ped SA	Acute	Total Beneficiaries
2 (7%)	16 (57%)	5 (18%)	2 (8%)	1 (3%)	2 (7%)	28 (100%)

Table B - Cost-Effectiveness WY Two

Non-Waiver			
Base	SP	Admin	Total
$2,394,380	$736,122	$13,380	$3,143,882

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$2,760,067	$609,289	$360,828	$3,730,184	($586,302)

WAIVER YEAR THREE (Renewal Year One) – (See Table C) In the third waiver year, we assume that the Pilot will add additional beneficiaries for a total of 36. Additionally for WY Three we anticipate, based on trends that began in January 2003, that more of the beneficiaries will be originating from higher costs centers such as developmental centers. However to calculate future cost-effectiveness we used the current (WY Two) breakdown of beneficiaries as described above. Therefore, assumptions in WY Three are based on a total of 36 beneficiaries coming from the following facilities of origin:

Assumptions for Beneficiaries' Facilities of Origin WY Three

SNF	ICF/DD-N	DC	Adult SA	Ped SA	Acute	Total Beneficiaries
3 (7%)	20 (57%)	6 (18%)	3 (8%)	1 (3%)	3 (7%)	36 (100%)

Table C - Cost-Effectiveness WY Three

Non-Waiver			
Base	SP	Admin	Total
$4,930,560	$946,443	$15,228	$5,892,231

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$4,704,120	$804,476	$243,468	$5,752,064	$140,167

(Note that in this year staffing was reduced to four.) It can be seen in Table C that in WY Three, even using conservative assumptions, the Pilot begins to show cost-effectiveness with a net Medi-Cal savings of $140,167.

WAIVER YEAR FOUR (Renewal Year Two) – (See Table D) The fourth waiver year is based on the assumption that the Pilot would add an additional four facilities, three adult and one pediatric, and increase enrollment to 60 beneficiaries. The same breakdown of facilities of origin in WY Two was used to determine assumptions in WY Four. The following describes the beneficiaries' facilities of origin:

Assumptions for Beneficiaries' Facilities of Origin WY Four

SNF	ICF/DD-N	DC	Adult SA	Ped SA	Acute	Total Beneficiaries
4 (7%)	34 (57%)	11 (18%)	5 (8%)	2 (3%)	4 (7%)	60 (100%)

Additionally, for the first time a 3.6% COL increase was added to Base, SP and Admin costs. (See Methodology and Definitions of Terms above). As shown in Table D, the Pilot shows a net Medi-Cal savings of $28,810

Table D - WY Four

Non-Waiver			
Base	SP	Admin	Total
$8,204,400	$1,372,721	$26,309 ($25,380 +3.6%)	$9,603,430

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$8,125,843	$1,166,813	$281,964 ($272,166 +3.6%)	$9,574,620	$28,810

C. WAIVER SERVICES INCLUDED IN BASE RATE FOR ICF/DD-CN PILOT

Medical	Non-Medical
Continuous (24-Hour) skilled nursing including but not limited to: • Ventilator Care • Tracheotomy Care • Oxygen Delivery/CPAP • Suctioning • Continuous IV Therapy • Total Parenteral Nutrition • Medication Administration • Decubitus Care Stage III and Above	All developmental services under the State Plan including but not limited to: • Developmental Training • Active Treatment • Habilitative Services • Other Services that May be Provided by an ICF/DD-N Facility

D. METHODOLOGY FOR THE DETERMINATION OF PILOT BASE RATE

Two separate rates for ICF/DD-CN services were developed in Waiver Year One. One rate was for a ventilator dependent beneficiary and the other was for a non-ventilator dependent beneficiary. Separate rates were established to recognize the additional expenditures necessary to facilitate the needs of consumers using ventilators. Additionally, due to the higher acuity of the beneficiary that this Pilot is addressing, $6.09 was added to the cost of a non-ventilator-dependent beneficiary for the availability of a back-up ventilator. (This was calculated by assuming a census of five and using 1/5 the cost associated with the facility-required back-up ventilator). The methodology used to determine the per day rates for the ICF/DD-CN Pilot facility was based on the assumption that all physical plant requirements, non-medical supplies, and non-nursing staff required for the Pilot facility would be the same as was currently required in the ICF/DD-N facility model. Additional allowance for ventilators and increased nursing staff was added as shown below.

Ventilator-Dependent Beneficiary	
ICF/DD-N Facility 2001 Daily Rate	$181.57
Additional RN Hours (2 hours/day)	$81.14
Additional LVN Hours (3 hours/day)	$88.23
Ventilator Equipment, Primary	$30.47
Ventilator Equipment, Back-Up	$6.09
Total	$387.50
Non- Ventilator-Dependent Beneficiary	
ICF/DD-N Facility 2001 Daily Rate	$181.57
Additional RN Hours (2 hours/day)	$81.14
Additional LVN Hours (3 hours/day)	$88.23
Ventilator Equipment, Back-Up	$6.09
Total	$357.03

E. INSTITUTIONAL BASE RATES (WEIGHTED)

Effective 8/1/02	
SNF	$114
ICF/DD-N	$183
Adult Sub-Acute	$474
DC	$559
Ped Sub-Acute	$626
Ped Acute	$1391

Effective 8/1/03	
SNF	$114
ICF/DD-N	$183
Adult Sub-Acute	$509
DC	$559
Ped Sub-Acute	$640
Ped Acute	$1391

F. SUMMARY OF TABLES

Table A - Cost-Effectiveness WY One

Non-Waiver			
Base	SP	Admin	Total
$313,645	$194,824	$9,084	$517,553

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$412,301	$157,733	$360,828	$930,862	$(413,309)

Table B - Cost-Effectiveness WY Two

Non-Waiver			
Base	SP	Admin	Total
$2,394,380	$736,122	$13,380	$3,143,882

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$2,760,067	$609,289	$360,828	$3,730,184	$(586,302)

Table C - Cost-Effectiveness WY Three

Non-Waiver			
Base	SP	Admin	Total
$4,930,560	$946,443	15,228	5,892,231

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$4,704,120	$804,476	$243,468	$5,752,064	$140,167

Table D - Cost-Effectiveness WY Four

Non-Waiver			
Base	SP	Admin	Total
$8,204,400	$1,372,721	$26,309	$9,603,430

Waiver				
Base	SP	Admin	Total	Savings / (Loss)
$8,125,843	$1,166,813	$272,166 +3.6%=$281,964	$9,574,620	$28,810

EVALUATION OF THE ICF/DD-CN PILOT PROJECT

Executive Summary

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Purpose of the Study

The California Department of Health Services (DHS) was required by AB 359 to institute a waiver pilot program under the auspices of Section 1915(b) of the Federal Social Security Act. The purpose of the pilot program is to provide continuous, twenty-four hour skilled nursing care to medically fragile persons with developmental disabilities in a new type of facility defined under the waiver --Intermediate Care Facility for Developmentally Disabled-Continuous Nursing (ICF/DD-CNs)—as a benefit of Medi-Cal. Under previous models, these individuals either resided at home or in larger institutions providing twenty-four hour nursing care, such as skilled nursing facilities (SNFs), sub-acute facilities, acute care hospitals, or state-run developmental centers. In contrast, the ICF/DD-CN services are being provided in small, home-like, community-based residential settings.

This study, conducted by California State University, Sacramento (CSUS) under an Interagency Agreement with DHS, evaluates the implementation phase of the Pilot Projects with attention to the following:

1. Pilot facility selection process
2. Consumer Enrollment
3. Educational outreach
4. DHS assurance of provision of quality of care through monitoring activities
5. Providers' and consumers' satisfaction with the pilot process
6. Cost effectiveness of the ICF/DD-CN pilot program

Methodology

California Department of Health Services (DHS) made all records and documents associated with the ICF/DD-CN pilot project available for review by the CSUS evaluation team. Data were gathered on the following:

- Facility Selection: Educational outreach materials, monthly submissions from pilot facilities, reports of site visits and facility reviews, Treatment Authorization Requests (TARs), procedure manuals, special incident reports, and grievances.
- Enrollment: For facilities that had residents by January 1, 2003, facility documentation, facility environment, equipment and other resources, and interaction between staff and consumers.
- Education: Day programs and school-based programs for a sample of consumer
- Satisfaction: Interviewed residents and/or their guardians, providers (ICF/DD-CN facility managers and staff), personnel in school and day programs, and DHS staff about their experiences working with the ICF/DD-CN pilot project.
- Costs:
- Comparative evaluations: Findings of the research nurses were compared to findings of the DHS nursing staff (Licensing and Certification and Medi-Cal Operations Division).
- Focus groups: Focus groups were conducted with the Regional Centers referring and/or providing case management services for consumers residing in the pilot project facilities.

Results

The DHS proposal planned for ten pilot project facilities, with four to six residents residing in each facility, totaling forty to sixty residents. Although ten facilities were selected to be part of the pilot project, by January 31, 2003, there were only seven pilot facilities in the program containing a total of 23 residents. Three facilities were no longer in the pilot: one was closed by DHS and two withdrew. Of the seven remaining facilities, two were operating at full capacity three had some residents, but were not full. Another facility had enrolled four residents, but did not have any residents by January 31, 2003. Three others had two to four residents. The seventh facility did not have any residents by January 31, 2003. Soon after the data were gathered, one of the partially-filled facilities withdrew from the pilot project, and the seventh one began to enroll residents.

The majority of persons (60%) enrolled in pilot project facilities resided in ICF/DD-N facilities prior to placement in the ICF/CC-CN facilities. Another 16 percent came from DCs and the rest were from Sub-acute, SNF, and acute care facilities. Contrary to DHS' expectations before the pilot began, no consumers came from their families' homes.

Pilot Facility Selection Process

DHS Selection Protocol

Applicants to become ICF/DD-CN providers had to submit an application form that included documentation delineating the following:

- Agreement to accept only waiver eligible Medi-Cal beneficiaries; to meet beneficiaries' health care and developmental needs; to follow all state and federal laws and regulations; to provide data and information required by DHS for evaluation of the pilot projects.
- Ability to meet all waiver requirements for participation, including licensure as an ICF/DD-N or eligibility for licensure as an ICF/DD-N facility; a licensing history that indicates compliance with state and federal licensing and certification requirements during the three years prior to completing an application.

In addition, providers had to demonstrate, as determined by a Licensing and Certification (L&C) survey, compliance with regulatory requirements for the general physical plant, staffing, and equipment and supplies.

In order to screen the provider applications, DHS developed a numeric rating form. Each application was scored individually by 3 DHS employees. A committee, consisting of fourteen DHS staff and two Regional Center representatives, reviewed the scoring and ranked the facilities. The committee's choices were reviewed and approved by Department of Health Services (DHS) management. The review process was objective and based upon factual evidence of ability to provide care that met with state and federal regulations.

L&C conducted reviews of selected facilities to ensure compliance with regulations. They reviewed documentation of approval of facilities by state fire marshals, assessed the

physical plant, staffing, equipment, and reviewed criminal record clearance requirements. Deficiencies were discussed with the providers and then documented in follow-up letters. There was evidence of frequent interaction and guidance from L&C during this initial review process.

For the most part, the Regional Center staff who participated in the focus groups with CSUS felt that DHS selected pilot projects with excellent reputations. However, the Regional Centers would have liked more input into the pilot facility selection process. The Regional Centers indicated that their local insight in regard to facilities and the availability of medical care providers should be sought before any ICF/DD-CN pilot project is funded.

DHS' Strategies to Confirm Competencies of the Pilot Facility Staff

DHS monitors pilot facility staff competencies in a number of ways.

- DHS has delegated to the program department, the California Department of Developmental Services (DDS), responsibility for reviewing and approving the families' program plans, procedures, and training plans.
- DHS staff monitors staff competencies and certification status for specialized procedures during site visits.
- DHS monitors facility staffs' current licenses and criminal clearances, in-services, attendant training, and trainings on specialized procedures during site visits. DHS documents actions to remediate any identified problems.

The Regional Centers indicated that the residents of the ICF/DD-CN pilot project facilities are very medically fragile and that DHS' current level of oversight of facilities' ability to care for this vulnerable population is needed to ensure the safety of the residents. The Regional Center employees indicated a desire to work collaboratively with DHS to help monitor key competencies, provide technical assistance, and help reinforce recommendations made by DHS.

A review of DHS records supports the need for ongoing assessment of ICF/DD-CN staff's competencies, since facilities continue to need guidance and oversight regarding safe practices. In addition, both record reviews and interviews indicate that facilities seek guidance and support for ensuring their competence from DHS nurses. A day-long training at which regulatory mandates were distributed and the roles of the L&C and MCOD were described were very successful. The positive impact of the DHS nurses' efforts is evident.

Access of Pilot Projects to Emergency Room Services, Acute Care Hospital Facilities, Medical Care and Sub-Specialty Care, and Ancillary Care Services

All pilot facilities are within ten minutes of emergency rooms and acute care hospital facilities, and have made local fire departments aware of their residences. Regional Center staff expressed concern that acute care hospitals may not have the expertise to address the ICF/DD-CN consumers' special needs and suggested funding be augmented to cover one-on-one care from pilot facility staff when an ICF/DD-CN consumer is hospitalized, especially if the consumer is non-verbal.

Primary care physicians review consumers' health status at least every 60 days, as documented in consumer records. Each facility had agreements with a number of sub-specialists, generally including neurologists, gastroenterologists, podiatrists, psychiatrists, and pulmonologists. Several facilities had problems accessing one or more sub-specialists in a timely manner.

There is evidence in records that consumers have access to ancillary care providers, and ICF/DD-CN staff indicated there were no barriers to accessing ancillary care.

Consumer Enrollment

The greatest challenge to implementation of the ICF/DD-CN pilot project has been the lack of consumer enrollment. There have been three significant barriers to enrollment:

- The possible "sun setting" of the legislation that initiated the pilot project;

- Changes in the California economy;
- Delays in the identification and enrollment of consumers.

Legislation to extend the ICF/DD-CN project was not passed until September 30, 2002. Families and Regional Center staff were concerned that the pilot project would not be extended and, therefore, hesitated to place consumers in ICF/DD-CN facilities.

Regional Center personnel indicated that ICF/DD-CNs are a much needed service, since the alternatives lack the home-like atmosphere and personal attention of the ICF/DD-CN facilities. Regional Center employees stated that the ICF/DD-CN staff is sensitive to the needs of persons with disabilities, very committed to the population, and familiar with their unique needs.

The Regional Centers have encountered resistance to placement of individuals with developmental disabilities in ICF/DD-CNs from some parents who fear that a "pilot project" is temporary, that smaller facilities are more vulnerable than larger ones, and they have heard horror stories about treatment in community-based facilities. However, the Regional Centers find that families with members enrolled in an ICF/DD-CN are very happy with the care provided in this setting.

Some Regional Centers suggest that guidelines for placement be further refined. Of particular concern is developing a profile of consumers who will do well in ICF/DD-CN facilities. Regional Center physicians indicate that consumers who have multiple, serious health problems that are stable can easily adapt to a less restrictive environment, like an ICF/DD-CN. Those who have health problems that are unstable-- subject to frequent onset of acute illness or rapidly deteriorating health conditions-- on the other hand, may not fare as well in a less restrictive environment. They are more likely to need to be hospitalized on a regular basis, thus increasing their personal risk and the provider's financial risk.

The Regional Center staff expressed some confusion about which consumers facilities will accept. Getting the right mix of consumers is important for the safe and effective

functioning of an ICF/DD-CN facility. However, they expressed concern that persons with both behavioral and medical health problems may be rejected for placement because they require more staff time and attention. Regional Centers indicated that consideration should be given to increasing daily funding levels for care of individuals with severe behavioral problems as well as health care needs.

Two facilities currently have waiting lists, while others have vacancies. Facilities that filled their vacancies most quickly moved residents from existing ICF/DD-N facilities they owned. The facilities that are not operating at capacity are enrolling consumers from DCs, sub-acute facilities, and SNFs. Concerns were raised about the transition period from one type of environment to the next. Transition is known to be a time of increased fragility, and it is helpful when the facilities where consumers are living send their staff to the ICF/DD-CN to assist with the consumer's transition to the new residence.

Department of Health Service's Assurance of Provision of Quality of Care

DHS has recently published a document, the Pre-Admission Screening Check List, to help guide facilities in evaluating consumers for acceptance into their ICF/DD-CN. Facilities are also given written guidelines, "Smooth Move," that identify all preadmission, admission, transfer, and discharge requirements, including citations of the relevant federal and state regulations. The DHS nurses utilize initial visits to assure that facilities in meet federal and state regulations.

DHS nurse's records demonstrate consistent attention to the quality of consumer's ongoing health care. Interviews with the Regional Centers supported the effectiveness of DHS's interventions.

DHS requires each ICF/DD-CN facility to submit monthly logs for areas such as staffing levels, grievances, special incidents and so forth. During site visits DHS nurses compare

these logs to agency records, and investigate any discrepancies. The monthly logs are also used by DHS to address consumer health outcomes.

DHS nurses monitor the quality of care during visits by assessing the following:

- Documentation of care;
- Responses to physician orders, lab values, and response to abnormal findings;
- Assessment of how plans of care are implemented;
- Coordination of planning with other programs and implementation of recommendations made by ancillary care providers;
- Review documents, observe care, and interview personnel in day and school programs;
- Actions to ensure consumers get training in life skills, as appropriate.

DHS nurses consistently review the physical environment of ICF/DD-CN facilities, with particular attention to consumers' safety. Any unusual marks, including bruises or scratches, are noted and records are reviewed to ascertain causes and responses of the ICF/DD-CN staff.

DHS nursing staff informs facilities of their observations, including any identified problems, during exit conferences and then follow-up within a few days of the visit with a letter describing their findings. When DHS finds serious quality-of-care problems they do an immediate follow-up site visit to monitor adherence to the plans of care.

Regional Center personnel felt that ICF/DD-CN consumers need significantly more oversight by DHS nurses than other types of ICF facilities to ensure that residents remain as healthy as possible. The consumers have complex, multiple, overlapping chronic health problems that are significantly affected by environmental factors. The regional centers thought that the DHS reviews should focus heavily on quality of care, and should be as intense as the reviews of hospitals and sub-acute facilities

Most of the Regional Centers would like a closer working relationship with the DHS survey nurses. If there are any major concerns, the Regional Center would like to assist the facility to change their practices in a timely manner.

The Regional Centers recommend a change in the culture surrounding the DHS survey process. Currently, facility staff expresses disappointment and feel discouraged when they are criticized or cited for violations of regulations and some view the DHS reviews as punitive. The Regional Centers indicated that providers need constructive feedback and guidance on how to do things better. The Regional Centers are interested in working with DHS to support ICF/DD-CN facilities, through quality improvement, to enable them to provide a high quality of care to consumers. The motto of one Regional Center is "Working together to make good programs better" and suggested that this should be the motto for the ICF/DD-CN pilot projects.

Regional Centers requested clarification about the parameters of "twenty-four hour nursing care." There is some confusion about how to determine if a consumer's status is stable enough to participate in community activities. The Regional Centers would also like clarification of what an RN can do versus what an LVN can do.

DHS' Ability to Evaluate Consumers' and Providers' Satisfaction

Consumers

DHS documents the results of interviews with consumers or their guardians for each facility. There has been a high degree of satisfaction with the ICF/DD-CN pilot project. Interviews with family members support DHS findings. As one mother indicated, "I feel my child is safer now because of the twenty-four hour care with nurses. She has a lot of medical problems and I feel she is in good care…The home is a nice environment and not stuffy and cold like hospitals…The staff is caring and she was able to transfer with another girl she has lived with for the past year." Comments of all of those interviewed were consistently positive. Higher functioning residents were very proud of where they lived, and happily showed research nurses around their "home." Consumers found the staff to be very caring and seemed delighted with the opportunities they have enjoyed

since moving to the ICF/DD-CN. However, they also expressed anxiety about losing their homes if the ICF/DD-CN pilot project is ended. These concerns were echoed by Regional Center staff. They worried that consumers who are hospitalized for any length of time may not be able to return to their "home" because an ICF/DD-CN facility can't hold an unpaid bed indefinitely.

DHS' has clearly defined complaint and grievance protocols. DHS reviews addressed placements of consumer's rights and the complaint/grievance process in visible and easily accessible locations. Documented evidence indicates that these protocols are followed. Only one grievance was filed during the first six months of the ICF/DD-CN pilot project.

Providers

The providers seem to be very attached to their residents and are concerned about meeting their needs. Several facilities have garnered extensive support from their local communities.

Providers have expressed two general concerns. First, the providers who aren't at capacity are worried about their ability to stay in business. Another area of concern is the review process. As noted in a survey reported by DHS, the providers want DHS to, "Educate us to do it right, don't tear us down." As discussed previously, providers desire more positive feedback from DHS nurses, both verbally and in written evaluations. They would also like assistance in improving their functioning.

Regional Centers

Regional Center staff expressed a high degree of satisfaction with the existing ICF/DD-CN pilot projects. They indicated that consumers are treated very well, that families are happy with the services, and that the staff are highly skilled and emotionally sensitive to the residents. The ICF/DD-CN personnel know the consumers very well and immediately pick up subtle cues of discomfort and health status changes. The Regional Centers were also impressed with the physical layouts of some facilities.

DHS Educational Outreach

DHS provided outreach to ICF/MR facilities, Regional Centers, Developmental Centers, and community groups to promote the ICF/DD-CN facilities. DHS used a number of methods to promote the ICF/DD-CN Pilot Project, including articles in newsletters, development of promotional brochures, and a series of educational programs for Regional Centers and DCs.

Cost Effectiveness of the ICF/DD-CN Pilot Program

There are too few consumers in the pilot project to allow any valid evaluation of the cost benefit of this project. There needs to be more data on more consumers over a longer time period to adequately evaluate the cost effectiveness of the ICF/DD-CN pilot project. Using the criteria developed by DHS for the ICF-DD-CN Waiver Cost Effectiveness Analysis the pilot project is not cost effective. However, the following factors have adversely affected the cost effectiveness of this pilot project:

- The two pilot projects that are filled to capacity enrolled most of their residents from ICF/DD-N facilities. In their waiver application DHS projected that ICF/DD-N facilities would be the source of 15% of the referrals for the ICF/DD-CNs. Currently, however, 54% of the ICF/DD-CN consumers formerly resided in ICF/DD-N facilities, which cost only $181.57 per day compared to $357.03-$387.50 per day for ICF/DD-CN facilities. It is important to note that the care of consumers in one ICF/DD-N facility had been significantly supplemented by the local Regional Center, thus costing more than $181.57 per day.
- Costs projected for DCs do not include overhead expenses; the current average daily cost per DC resident is actually $559.00 rather than $364.86 listed in the ICF-DD-CN Waiver Cost Effectiveness Analysis.
- There have been serious delays in placing residents in the ICF/DD-CN facilities.

Regional Centers and facility operators point out that it is important to consider the current financial pressures experienced by the facilities with unfilled beds. One facility

had two consumers, one who died while in an acute care hospital (the quality of residential care was not a factor in this person's death), and another who was hospitalized in acute care and is now in rehabilitation. Another facility decided to end their participation in the ICF/DD-CN pilot project because costs of care were too prohibitive for them to continue. Some facilities received financial support from their local Regional Centers to help with expenses related to the physical modification of their facility. One facility was able to raise enough financial support in their community to build a brand new, state-of-the-art building. Some facility operators used their personal funds to make expensive and extensive changes in their facilities and to purchase special equipment, thus placing themselves at financial risk. This risk was further increased when beds remained unfilled.

Other fiscal factors have also adversely affected the ICF/DD-CN pilot projects. Regional Centers pointed out that the lack of start-up funds for the ICF/DD-CN pilot project decreased the applicant pool, and significantly financially stressed some of the pilot project facilities.

The Regional Centers also pointed out that ICF/DD-CNs are expected to have potential consumers spend time at their facilities, including overnight stays, prior to them being placed in the facility. In some cases, consumers visit numerous times, from four to six short-term stays, before placement and the facilities must assume all costs related to these visits, including the expense of twenty-four hour nursing care. Start-up funds could provide fiscal support for the pilot projects while agencies involved in the ICF/DD-CN pilot project increase their expertise in the selection and placement process. The pilot project facilities are assuming the total financial risk under the current process**.**

The ICF/DD-CN facilities have been adversely affected by community economic changes. Nursing salaries, for example, are now $45.00 per hour in some areas; they may go higher if the nursing shortage continues and Regional Centers indicated that state funding must be responsive to these changes.

Finally, regional center staff pointed out that the vast majority of SNFs will not accept consumers under the age of eighteen. In addition, the DCs are not accepting new residents. This leaves no where for individuals to reside, unless they meet criteria for placement in a sub-acute residence. The ICF/DD-CN pilot projects offer a needed alternative for this population.

Conclusions and Recommendations

DHS staff has endeavored to establish an effective ICF/DD-CN pilot project. There is evidence of excellent collaboration among state agencies, including within DHS and between DHS and DDS. DHS nursing staff working in MCOD and L&C has provided extensive oversight for this program. They are very knowledgeable of Federal and State regulations and ensure that ICF/DD-CN facilities operate in compliance with these regulations. They follow-up on all recommendations and ensure that they are implemented. They monitor and analyze monthly reports and investigate all hospitalizations. The DHS nurses have developed written materials to provide technical support for the ICF/DD-CN facilities.

It is recommended that DHS develop more collaborative relationships at the local level, particularly with local Regional Centers. A closer link with the local Regional Centers is particularly important for the following activities:

- Selection of new facilities: Regional Centers' local insight can augment DHS evaluations of facilities;
- Oversight of quality of care: Regional Centers can follow-up on DHS concerns, reinforce recommended changes, and help monitor consumer health;
- Provision of technical assistance: Regional Centers could augment and support DHS technical assistance, as well as report changes in practices within ICF/DD-CNs as a result of technical assistance;
- Placement of residents in facilities: Regional Centers can work with DHS to identify appropriate consumers and help identify appropriate case mixes;

Limited funding for some aspects of the ICF/DD-CN program has created some hardships, in particular the lack of start-up funds. In addition, consideration should be given to providing stop-gap funding while agencies are beginning to fill beds, and when residents are hospitalized for extended periods. As more is learned about the characteristics of consumers best suited for ICF/DD-CN facilities, and as more is learned about appropriate case mixes, there should be less of a need for stop-gap funding.

Consumers, their guardians, and their Regional Center case managers have all expressed great enthusiasm for the ICF/DD-CN facilities. They provide a needed level of care in local, home-like environments that has not previously been available. This program needs more time to stabilize, and will need ongoing enhanced support from DHS. It is particularly important that the level of nursing oversight be maintained for this medically fragile population. Facility staff, including their licensed nursing staff, has needed the expertise of the MCOD and L&C nurses to assist them in improving their skill in managing the complex needs of the consumers for whom they care. The ICF/DD-CN nurses will need to become clinical experts in the management of individuals with developmental disabilities who are medically fragile. Although the nurses may have expertise in caring for specific problems, the art of caring for individuals with complex, interwoven problems within a home-like environment will, in many cases, require a learning curve. The expertise of the DHS nurses is important for supporting this change.

The greatest value of the ICF/DD-CN facilities is the opportunity for consumers to have warm, intimate, personal relationships with a consistent group of caregivers. ICF/DD-CN facilities support individuality and the opportunity for personal growth. They also enhance consumers' ability to maintain closer ties with their local community. The greatest risk to consumers is inadequate management of their health. With adequate support, oversight and technical assistance ICF/DD-CN facilities should be able to provide health care as effectively as they provide emotional support.

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing Pilot Program

EXHIBIT G4 FACILITY SURVEY TOOL RESULTS (Four Returned)

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The ICF/DD-CN pilot program was well advertised.	1		2		1
The ICF/DD-CN pilot program provider information session explained the pilot application process				3	1
The ICF/DD-CN pilot program provider information session explained the requirements to participate in the pilot				3	1
The ICF/DD-CN pilot program application packet was clear in explaining the application requirements.				3	1
My regional center supports my participation in the ICF/DD-CN pilot program.				3	1
After initial acceptance into the pilot, I had adequate time to prepare my facility for the initial visit by Licensing and Certification Program (L&C).		1		2	1
The staff of the L&C Developmental Services, Consultation and Support Team (DS-CAST) were a resource for my questions regarding preparation of my facility for the initial pilot program visit.		1		3	
Treatment Authorization Requests (TARs) were processed in a fair and timely manner.				3	1
I had resources for my questions about TARs.				3	1
Payment claims were processed in a timely manner.				3	
I had a resource for my payment and claims concerns and problems.			1	2	1
Payment was received in a timely manner.				3	
The staff of Medi-Cal Operations Division (MCOD) Community Options Monitoring and Assessment Unit (COMAU) are a resource for my ICF/DD-CN level of care questions.				1	2
The staff of Medi-Cal Policy Division (MCPD) answer my general ICF/DD-CN pilot program questions.			1	1	1
The required facility reports for the pilot are reasonable.		1	1	2	
The monthly-required reports and reporting process were explained to me.			1	2	
Regional Center staff is a resource for me during the pilot.		2	1	1	
Department of Developmental Services staff is a resource to me during the pilot.			1	2	1
DHS staff works with me in a collaborative manner during the pilot.			1	3	
DS-CAST staff quarterly visits do not significantly disrupt our facility operations.		1		1	1
DS-CAST staff works with facility staff in a collaborative manner during their site visits.	1			2	1
COMAU staff visits do not significantly disrupt facility operations.		1	1	1	

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing Pilot Program

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
COMAU staff works with facility staff in a collaborative manner during their monitoring visits.	1		1	1	
I have a good understanding of the level of care required for the ICF/DD-CN pilot program.				2	1
I am satisfied with my facility's participation in the ICF/DD-CN pilot program.			1	2	
My facility's consumers (or their family) are satisfied with their participation in the ICF/DD-CN pilot program.				2	1
I understood that the pilot would continue for only a limited time.				2	1

Optional: Facility name: _____
Comments on back:

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing (ICF/DD-CN) Pilot Project

EXHIBIT G3 MEDICAL PROVIDER SURVEY TOOL RESULTS (one MD responded)

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Health					
My patient's health has been as good as could be expected since coming to this ICF/DD-CN facility.					6
My patient has had fewer problems with infections since coming to this ICF/DD-CN facility.					6
My patient has had no new decubiti since coming to this ICF/DD-CN facility.					6
My patient has had no fecal impactions since coming to this ICF/DD-CN facility.					6
My patient has had fewer problems with dehydration since coming to this ICF/DD-CN facility.					6
My patient has had no unexpected weight loss since coming to this ICF/DD-CN facility.					6
My patient has required less acute hospitalization since coming to this ICF/DD-CN facility.					6
The 24-hour nursing care provided in this ICF/DD-CN facility improves my patient's health outcomes.					6
Safety					
My patient is safe in this ICF/DD-CN facility.					6
My patient, if applicable, has not had a tracheostomy displacement at this ICF/DD-CN facility.			1		4
My patient, if applicable, has not had a gastrostomy displacement while at this ICF/DD-CN facility.					6
If I had a safety concern for my patient, I always knew with whom to talk.					6
Quality of Life					
My patient has a better quality of life at this ICF/DD-CN facility than where he/she lived before.					6
My patient receives the special *treatments* he/she needs at this ICF/DD-CN facility.					6
My patient receives the special *equipment* he/she needs at this ICF/DD-CN facility.					6
My patient receives the appropriate services and support he/she needs as their needs have changed at this ICF/DD-CN facility.					6
My patient receives the best possible care at this ICF/DD-CN facility.					6

Thank you for your time in completing this survey.

Comments: (Use back if necessary)

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing (ICF/DD-CN) Pilot Project

EXHIBIT G_2 REGIONAL CENTER SURVEY TOOL RESULTS (Nine Returned)

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Health					
The consumer has been as healthy as could be expected since coming to this ICF/DD-CN facility.		1	1	3	4
The consumer has had fewer problems with infections since coming to this ICF/DD-CN facility.		3	3	2	2
The consumer has had fewer problems with pressure sores since coming to this ICF/DD-CN facility.			5	3	
The consumer has had fewer bowel problems since coming to this ICF/DD-CN facility.			5	2	2
The consumer has had fewer problems with dehydration since coming to this ICF/DD-CN facility.			4	2	3
The consumer has had fewer problems with their weight since coming to this ICF/DD-CN facility.		2	2	2	3
The consumer has had to go to the hospital less often since coming to this ICF/DD-CN facility.		2	3	2	2
Safety					
The consumer is safe here in this ICF/DD-CN facility.				4	5
The consumer has a gastrostomy or a tracheostomy tube. (if you disagree skip the next item)				1	4
The consumer has not had any problems with their tracheostomy or gastrostomy tube coming out while at this ICF/DD-CN facility.				2	3
The ICF/DD-CN facility staff are very attentive to the safety needs of the consumer.				3	6
The ICF/DD-CN facility staff do their best to prevent safety problems from happening.				3	6
If I had a safety concern I always knew with whom to talk.				3	6
Quality of Life					
The consumer has a better quality of life at this ICF/DD-CN facility than where he/she lived before.			2	3	4
The ICF/DD-CN facility staff makes an effort to identify the consumer's needs.				3	6
The ICF/DD-CN facility staff makes an effort to identify the consumer's preferences.				3	6
The ICF/DD-CN facility staff gives the consumer or their representative, choices about everyday matters, when appropriate.				3	6

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing (ICF/DD-CN) Pilot Project

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The facility staff makes an effort to keep the consumer or their representative informed and seeks input on major life decisions like medical treatment or where to go to school.				4	5
The consumer or their representative goes to meetings with the ICF/DD-CN facility staff to discuss the consumer's care.			1	3	4
The consumer goes out to events or outings in the community while living at the ICF/DD-CN facility.	1	1	2	4	1
The consumer receives visits from family and/or friends while living at this ICF/DD-CN facility.		1	1	3	4
The consumer goes out with family or friends while living at this ICF/DD-CN facility.		5	1	1	2
The consumer takes vacations while living at this ICF/DD-CN facility.	1	5	2		
The consumer is happy with the type of outings he/she is able to participate in while living at this ICF/DD-CN facility.		1	3	5	
The consumer gets enough help for his/her needs at this ICF/DD-CN facility.				5	4
The consumer receives the special *treatments* he/she needs at this ICF/DD-CN facility.				5	4
The consumer receives the special *equipment* he/she needs at this ICF/DD-CN facility.				6	3
The consumer receives the appropriate services and support he/she needs as their needs have changed at this facility.			1	4	4
The staff of this ICF/DD-CN facility works with the consumer for the best possible outcomes.				4	5
The consumer receives the best possible care at this ICF/DD-CN facility.				3	6
The consumer has opportunities for growth and change at this ICF/DD-CN facility.			3	1	5
The consumer is happy with their life right now living at this pilot program facility.				4	5

Thank you for taking the time to complete this survey.

Optional: Completed on behalf of: _____

Comments:

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing (ICF/DD-CN) Pilot Project

EXHIBIT G1 CONSUMER SURVEY TOOL RESULTS (Seven Returned)

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Health					
My family member has been as healthy as could be expected since coming to this pilot project facility.				1	6
My family member has had fewer problems with infections since coming to this pilot project facility.			2	2	3
My family member has had fewer problems with pressure sores since coming to this pilot project facility.			1	1	5
My family member has had fewer bowel problems since coming to this pilot project facility.			2	2	3
My family member has had fewer problems with dehydration since coming to this pilot project facility.			1	3	3
My family member has had fewer problems with their weight since coming to this pilot project facility.			2		5
My family member has had to go to the hospital less often since coming to this pilot project facility.				4	3
Safety					
My family member is safe here in this pilot project facility.				2	5
My family member has a gastrostomy or a tracheostomy tube. (if you disagree skip the next item)	1			2	3
My family member has not had any problems with their tracheostomy or gastrostomy tube coming out while at this facility.		1		2	2
The pilot project facility staff are very attentive to the safety of my family member.				2	5
The pilot project facility staff do their best to prevent safety problems from happening.				2	5
If I had a safety concern I always knew whom I could talk to.				2	5
Quality of Life					
My family member has a better quality of life at this pilot project facility than where he/she lived before.			2	1	4
The pilot project facility staff make an effort to identify my family member's needs.				2	5
The pilot project facility staff make an effort to identify my family member's preferences.				2	5
The facility staff give my family member choices or ask me to choose on their behalf, about everyday matters, when appropriate.		1	1	2	3

Intermediate Care Facilities for Persons with Developmental Disabilities-Continuous Nursing (ICF/DD-CN) Pilot Project

Please mark the box that most accurately reflects your response to the statements below:	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The pilot project facility staff make an effort to keep my family member or myself informed and seek input on major life decisions like medical treatment or where to go to school.				3	4
My family member and/or I go to meetings with the pilot project facility staff to discuss my family member's care.				4	3
My family member goes out to events or outings in the community while living at the pilot project facility.				2	5
My family member receives visits from family and/or friends while living at this pilot project facility.				3	4
My family member goes out with family or friends while living at this pilot project facility.				2	3
My family member takes vacations while living at this pilot project facility.		2	2		
My family member is happy with the type of outings he/she is able to participate in while living at this pilot project facility.			1	3	3
My family member gets enough help for his/her needs at this pilot project facility.				3	4
My family member receives the special treatments he/she needs at this pilot project facility.				3	4
My family member receives the special equipment he/she needs at this pilot project facility.				3	4
My family member receives the appropriate services and support he/she needs as their needs have changed at this pilot project facility.				3	4
The staff of this pilot project facility work with me and my family member for the best possible outcomes.				4	3
My family member receives the best possible care at this pilot project facility.		1		1	4
My family member has opportunities for growth and change here.		1		1	4
My family member is happy with their life right now living at this pilot program facility.			1	2	4

Thank you for taking the time to complete this survey.

Optional: Completed on behalf of: _____

Comments:

PROCEDURES FOR CERTIFICATION OF CLIENT ELIGIBILITY FOR SPECIAL TREATMENT PROGRAM SERVICES

Upon completion of the client assessments, the designee of the Regional Center Director or the Local Mental Health Director shall forward the original of the client assessment form to the Regional Center Director or the Local Mental Health Director along with a certification form with his recommendation to certify or deny certification of each client assessed. The designee shall also retain one copy of the client assessment form for his files.

2. The facility shall retain one copy of the client assessment form in the client's chart, and forward one copy to the Department with the completed application package.

3. The designee shall recommend program certification based on the following criteria:

3.1 **Developmentally Disabled**

3.1.1 The client shall have a primary or secondary diagnosis of a developmental disability.

3.1.2 The client shall be physically able to participate in and benefit from the program.

3.1.3 The client assessment shall indicate significant areas in need of remediation.

3.1.4 Clients whose assessment indicates that an optimal level of functioning has been reached, but whose medical condition requires that he receive the level of basic care provided by the facility, may be recommended for certification in order to maintain current functioning level.

3.1.5 A client whose assessment indicates that an optimum level of functioning has been reached and whose physical condition is such that he can function at a lower level of care shall not be recommended for certification.

3.2 **Mentally Disordered**

3.2.1 Clients shall have a primary or secondary diagnosis of a mental disorder.

3.2.2 Clients shall have a chronic psychiatric impairment whose adaptive functioning is at least of moderate impairment.

3.2.3 Each recommendation for certification of eligibility shall describe the basis upon which such recommendation is based.

3.2.4 Each recommendation for certification of eligibility shall include and describe the impairment level of adaptive functioning.

3.2.5 Clients shall be physically capable to participate in the program.

In addition to the above, client may meet one or more of the following:

3.2.6 The client is in the terminal stages of an acute psychiatric episode and requires intensive services in preparation for placement at a lower level of care.

3.2.7 The client requires a significant number of individual interventions to modify antisocial or uncooperative behavior which prevents optimal participation in the treatment program.

3.2.8 A client may be recommended for certification on a maintenance basis only if he exhibits bizarre or unusual behavior presenting management problems which cannot be solved in a general nursing care setting.

4. Whenever the designee recommends not to certify a client for special treatment program services, he shall specify the reason, or reasons, in writing to the Local Regional Center Director or the Local Mental Health Director.

5. Upon receipt of the client assessment forms and the certification forms with the recommendations of his designee, the Regional Center Director or the Local Mental Health Director shall make a determination of each client's eligibility.

6. Upon determination of whether or not to certify a client as eligible for special treatment program services, the Regional Center Director or Local Mental Health Director shall complete the certification form and transmit four (4) copies of the form to the facility.

7. Whenever certification is denied by the Regional Center Director or Local Mental Health Director, he shall give his reasons in the space provided on the certification form.

8. The Regional Center Director or Local Mental Health Director shall retain one copy of the certification form and transmit one copy to his designee.

9. Clients shall be re-certified as eligible for special treatment program services at specified intervals using the procedures outlined above.

CERTIFICATION FOR SPECIAL TREATMENT PROGRAM SERVICES

(Read instructions on Reverse Before Completing Form)

PART I-Completed by Facility	Date:	**FOR OFFICIAL USE**
Beneficiary Name and Address:	Medi-Cal Identification Number:	
	Social Security Number:	
	Birth Date: / Age: / Sex: M F	
Facility Name and Address:	Guardian/Representative Name and Address:	Program Category: ☐ Developmentally Disabled ☐ ICF/DD ☐ ICF/DDH ☐ ICF/DDN ☐ Mentally Disordered

Part II-Completed by Designee of Regional Center Director/Local Mental Health Director

☐ Grant
☐ Deny

List below supportive information for this recommendation

Part III-Certification by:

☐ Regional Center Director
☐ Local Mental Health Director

☐ You are authorized to claim payment for treatment as recommended by you

From _____

To _____

which is a total of

_____days

☐ Request denied
Comments:

Signature:	Date:	Signature:	Date:
Title:	Affiliation:	Title:	

FORM DISTRIBUTION:

Developmentally Disabled: white, green-facility; canary, pink-regional center director; goldenrod-designee
Mentally Disordered: white, green-facility; canary, pink-local mental health director; goldenrod-designee

State of California—Health and Human Services Agency
Department of Health Services

California Department of Health Services

DIANA M. BONTÁ, R.N., Dr. P.H.
Director

GRAY DAVIS
Governor

This facility, >***facilty name***<, is participating in the State of California's Intermediate Care Facility for the Developmentally Disabled - Continuous Nursing (ICF/DD-CN) Pilot Program. The State is studying the feasibility of whether to make this type of facility a permanent health care option for those developmentally disabled individuals who would desire, and would benefit from living in small community-based facilities such as ICF/DD-N facilities, but who require more continuous skilled nursing than can be obtained in those facilities.

Due to the fact that >***facility name***< is a pilot facility (a test or trial facility) the services it provides are subject to becoming unavailable at the end of the pilot period (December 31, 2005). At that time, if the State decides that this new type of facility proves to enhance the health, safety and welfare of this fragile consumer group, and is fiscally sound, the Department of Health Services may recommend that the ICF/DD-CN become a permanent Medi-Cal option. On the other hand, if it is shown that this type of facility is not cost effective or valuable, the ICF/DD-CN facility type may be discontinued at the end of the trial period (December 31, 2005). If that happens, the Department of Health services will coordinate with the Department of Developmental Services as well as the Regional Centers and all consumers will be accommodated in other types of facilities that meet their needs and level of care.

You (or Consumer's representative) acknowledge that you have read and understand the above and agree to participate in this ICF/DD-CN Pilot Project.

I, >***Consumer***< or >***Consumer Representative***<, understand that >***facility name***< is participating in a study of a new type of facility and I am (or the consumer is) subject to being relocated at the end of the trial period.

Signed _____

Consumer

_____

Consumer Representative

Date: _____

ICF/DD-CN Pilot Program Facility Application Score

Facility: _____
Review date: 12/17/01 **Rank: _____out of _____**

Pilot Project Committee Agreement: _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Application Item	**Score Attained**	**Possible Points**
From *ICF/DD-CN Program Description* (Attachment A): ***1. Sample staffing pattern***, according to license capacity, for one week [waiver p. 14,3(b)(1)]		30
2. Profile of projected consumer needs: [waiver p. 10, #s 3&4]		
Acuity Level / Medical needs:		
Target population defined (homogeneity)		30
Predictable and unpredictable needs anticipated		30
MD order (support) for 24 hour need		30
Medical Plan of Care supports need for continuous nursing		30
Nursing Service needs:		
Licensed nurse competencies parallel anticipated acuity needs of consumers		
Identify potential placement sources (agencies, facilities)		
Identify appropriate 24-hour community medical resources for target population [waiver p. 15,D#1.e]		30
3. Profile of projected programs. Appropriate to: 1) projected medical needs, 2) projected age range, 3) self-determination needs discussed (as appropriate) and 4) at appropriate frequency for: [waiver p. 10, #4]		
Activity Programs		30
Training / Education Programs		30
Sensory Stimulation Programs		30
Consumer Placement (Attachment B) [waiver p.16,10,#3, &23]		30
Auxiliary Power (Attachment C) Identifies power source available OR delineates PLAN to install by L&C initial visit [waiver p.13#3,a.(2)		30
4 – 6 bed [waiver p. 18,III)		30
Complete accurate criminal clearance submission by 11/23		15
SUB-TOTAL		**435**
Tie breakers		
Letter of support from regional center		30
Superior Compliance with state and federal regulations as evidenced by three years without substantiated complaints in health and safety related areas. [waiver p.11]		90
Combined Total of three individual scorers		540

Comments:

Facility: _____
Review date: _____

Reviewed by: _____ **Division:** _____

Partial points acceptable for items with multiple responses (consumer placement) and/or If a qualitative nature (e.g. Section 2 of program description). For facilities without auxiliary power, may assess plan for installation on basis of effect on start up of pilot e.g. a plan causing significant delay and potential forfeiture to an alternate facility may receive a partial score.

Application Item	**Score Attained**	**Possible Points**
From *ICF/DD-CN Program Description* (Attachment A): ***1. Sample staffing pattern***, according to license capacity, for one week [waiver p. 14,3(b)(1)]		10
2. Profile of projected consumer needs: [waiver p. 10, #s 3&4]		
Acuity Level / Medical needs:		
Target population defined (homogeneity)		10
Predictable and unpredictable needs anticipated		10
MD order (support) for 24 hour need		10
Medical Plan of Care supports need for continuous nursing		10
Nursing Service needs:		
Licensed nurse competencies parallel anticipated acuity needs of consumers		
Identify potential placement sources (agencies, facilities)		
Identify appropriate 24-hour community medical resources for target population [waiver p. 15,D#1.e]		10
3. Profile of projected programs. Appropriate to: 1) projected medical needs, 2) projected age range, 3) self-determination needs discussed (as appropriate) and 4) at appropriate frequency for: [waiver p. 10, #4]		
Activity Programs		10
Training / Education Programs		10
Sensory Stimulation Programs		10
Consumer Placement (Attachment B) [waiver p.16,10,#3, &23]		10
Auxiliary Power (Attachment C) Identifies power source available OR delineates PLAN to install by L&C initial visit [waiver p.13#3,a.(2)		10
4 – 6 bed [waiver p. 18,III)		10
Complete accurate criminal clearance submission by 11/23		5
SUB-TOTAL		**145**
Tie breakers		
Letter of support from regional center		10
Superior Compliance with state and federal regulations as evidenced by three years without substantiated complaints in health and safety related areas. [waiver p.11]		30 (10 for each year)
Individual Scorer TOTAL		180

Comments:

Intermediate Care Facility for Persons with Developmental Disabilities, Continuous Nursing (ICF/DD-CN) Pilot Program

Background

In 1999, California passed legislation (Chapter 845, Statutes of 1999, AB 359) that was sponsored by Assemblywoman Aroner. This legislation established a pilot program to be administered by the Department of Health Services (DHS). The pilot program was created to test a new category of healthcare facility designed for individuals with developmental disabilities and medically complex conditions in a least restrictive setting. The legislation for the pilot program remains in effect through January 1, 2003.

For more information about the pilot

Call DHS at (916) 657-2542.

Consumer Participation Criteria

- Medical necessity for 24-hour, continuous nursing care, for conditions such as:
  - Tracheostomy care with or without ventilator dependence
  - Total parenteral intravenous therapy
  - Frequent medical and/or nursing interventions such as:
    - Respiratory Therapy
    - Hemodialysis or peritoneal dialysis
    - Special feeding requirements
    - IV administration of medications
    - Wound care

Other criteria include:

- Certified by the regional center as developmentally disabled and eligible for special treatment programs
- Enrolled in a regional center
- Medi-Cal program eligible

Contact your regional center representative for further placement assistance.

About the ICF/DD-CN Pilot Monitoring and over site

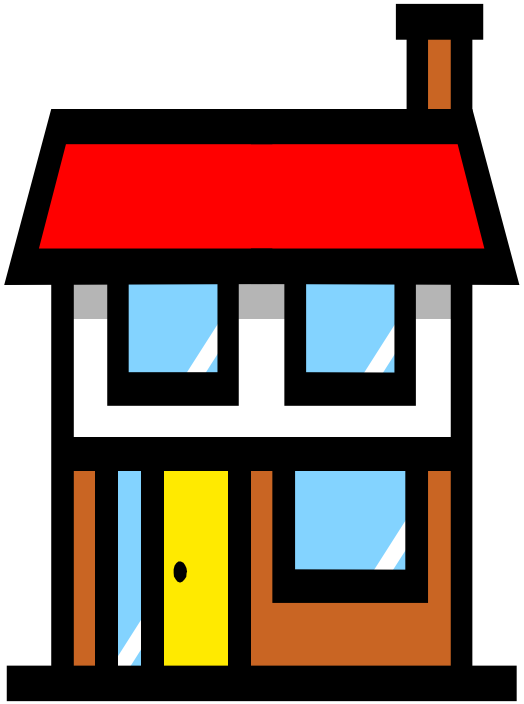
DS-CAST (Developmental Services -Consultation and Support Team) is a part of The Department of Health Services, Licensing and Certification Program. Representatives dedicated to the ICF/DD-CN project are responsible for monitory and oversight of the health, welfare and safety of individuals participating in the pilot project.

If you have any complaints regarding the care and services provided at the pilot facility please contact ***DS-CAST*** representatives by phone, letter or e-mail at;

(916) 324 - 5900

Developmental Service Consultation and Support Team
Department of Health Services
Licensing and Certification Program
1800 3rd Street, Suite 210
P.O. box 942732
Sacramento, Ca. 94234-7320
E-mail dscast@dhs.ca.gov

Individuals
with Developmental
Disabilities
and
Medically Complex Conditions
in a
Community Based Setting



Department of Health Services
Medi-Cal Policy Division
Waiver Analysis Section
714 P Street, Room 1400
Sacramento, CA 95814

Intermediate Care Facility For Persons With Developmental Disabilities, Continuous Nursing

Pilot Program

The California Department of Health Services
California Health and Human Services Agency
Grantland Johnson, Agency Secretary

State of California
Gray Davis, Governor

Intermediate Care Facility for Persons with Developmental Disabilities, Continuous Nursing (ICF/DD-CN) Pilot Program

Background

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    - Respiratory Therapy
    - Hemodialysis or peritoneal dialysis
    - Special feeding requirements
    - IV administration of medications
    - Wound care
- Certified by the regional center as developmentally disabled and eligible for special treatment programs
- Enrolled in a regional center
- Medi-Cal program eligible
- No age restrictions

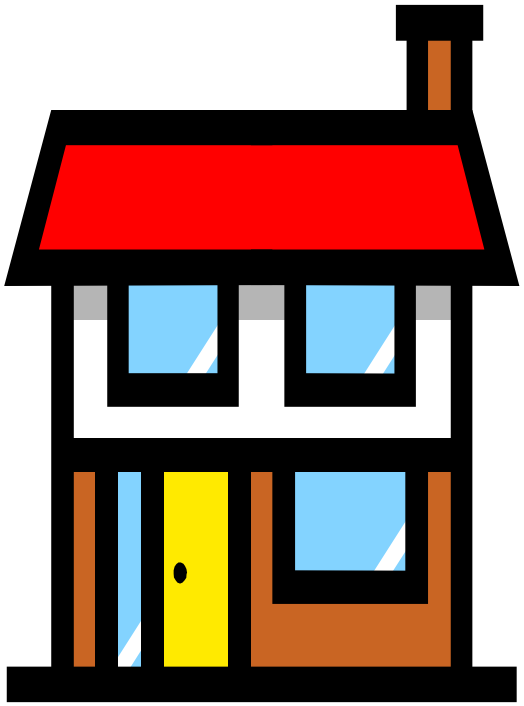
About the ICF/DD-CN Pilot Program

- There are ten ICF/DD-CN pilot program facilities statewide located in the following Regional Centers: Central Valley, Tri-Counties, North Bay, North Los Angeles, Inland, San Andreas, Golden Gate and Westside
- ICF/DD-CN pilot program facilities are expected to begin enrolling consumers by June 2002
- Regional Centers will facilitate placement into ICF/DD-CN pilot program facilities
- Consumer participants in the ICF/DD-CN pilot program must be Medi-Cal program eligible

Exclusions

Consumers enrolled in managed care health plans that include coverage for long-term care are not eligible for the pilot program. These plans are located in Orange, Santa Cruz, Monterey, Napa, Solano, Yolo and Santa Barbara counties.

Individuals
with Developmental
Disabilities
and
Medically Complex Conditions
in a
Community Based Setting



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Intermediate Care Facility For Persons With Developmental Disabilities, Continuous Nursing

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Special Terms and Conditions

(For federally funded service contracts and grant awards)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean "grant", "Grantee" and "Subgrantee" respectively.

Index of Special Terms and Conditions

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements.)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHS may direct as a means of enforcing such

provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHS, the Contractor may request in writing to DHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from DHS under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by DHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior written authorization from DHS.

3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by DHS or expenses for said items are reimbursed with state or federal funds.)

a. **Equipment definitions**

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

(1) **Major equipment**: A tangible or intangible item having a base unit cost of **$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment**: A tangible item having a base unit cost of **less than $5,000** with a life expectancy of one (1) year or more that is listed on the DHS Asset Management Unit's Minor Equipment List and is either furnished by DHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the DHS program contract manager.

(3) **Miscellaneous property**: A specific tangible item with a life expectancy of one (1) year or more that is either furnished by DHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

(1) Equipment purchases shall not exceed $50,000 annually.

To secure equipment above the annual maximum limit of $50,000, the Contractor shall make arrangements through the appropriate DHS program contract manager, to have all remaining

equipment purchased through DHS' Purchasing Unit. The cost of equipment purchased by or through DHS shall be deducted from the funds available in this agreement. Contractor shall submit to the DHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with DHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the DHS program contract manager, in writing, of an alternate delivery address.

(2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by DHS, prior written authorization from the appropriate DHS program contract manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by DHS (e.g., when DHS has a need to monitor certain purchases, etc.), DHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHS determines to be unnecessary in carrying out performance under this agreement.

f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. DHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by DHS and/or when said items are purchased or reimbursed with state or federal funds.)

a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

All equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement and not fully consumed in performance of this agreement shall be considered state equipment and the property of DHS.

(1) DHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by DHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the DHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHS Funds) does not accompany this agreement, Contractor shall request a copy from the DHS program contract manager.

(2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the DHS program contract manager using a form or format designated by DHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the DHS program contract manager. Contractor shall:

(a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to DHS according to the instructions appearing on the inventory form or issued by the DHS program contract manager.

(c) Contact the DHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by DHS' Asset Management Unit.

b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property not owned by the State.

c. Unless otherwise stipulated, DHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.

d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.

(1) In administering this provision, DHS may require the Contractor and/or Subcontractor to repair or replace, to DHS' satisfaction, any damaged, lost or stolen state equipment and/or

miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHS program contract manager.

e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, shall only be used for performance of this agreement or another DHS agreement.

f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the DHS program contract manager and shall, at that time, query DHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to DHS. Final disposition of equipment and/or miscellaneous property shall be at DHS expense and according to DHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by DHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, DHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different DHS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under this agreement.)

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to DHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHS.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.

(4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

(a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHS under the terms of this agreement, to the Contractor and/or Subcontractor.

(b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHS program contract manager.

(c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to DHS.

(d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

(e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).

[2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.

[3] The insurance carrier shall notify the State of California Department of Health Services, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.

(f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.

(g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity or desirability of incurring such cost.

(2) The State may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,
(b) A State college or university from any State,
(c) A Joint Powers Authority,
(d) An auxiliary organization of a California State University or a California community college,
(e) A foundation organized to support the Board of Governors of the California Community Colleges,
(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
(g) Entities of any type that will provide subvention aid or direct services to the public,
(h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: http://sam.dgs.ca.gov.

(4) Unless otherwise mandated by the funding agency (i.e., federal government), DHS may only pay the Contractor's overhead charges or indirect costs on the first $25,000 of each subcontract.

b. DHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.

(1) Upon receipt of a written notice from DHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHS. DHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by DHS, make said copies available for approval, inspection, or audit.

e. Sole responsibility rests with the Contractor to ensure that subcontractors, used in performance of this agreement, are paid in a timely manner. The timeliness of said payments may be affected by the timeliness of payments issued by DHS to the Contractor.

f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHS, to permit DHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to DHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHS under this agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that DHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.

   (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

   (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.

d. DHS has the option to void or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

(1) Except where DHS has agreed in a signed writing to accept a license, DHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement.

(2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of DHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of DHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHS. **Except as otherwise set forth herein, neither the Contractor nor DHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHS in the third-party's license agreement.

(4) Contractor agrees to cooperate with DHS in establishing or maintaining DHS' exclusive rights in the Intellectual Property, and in assuring DHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHS and which result directly or indirectly from this agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with DHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to DHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

(1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such

person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement, shall include DHS' notice of copyright, which shall read in 3mm or larger typeface: "© 2001, State of California, Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to DHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to DHS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHS' prior written approval; and (ii) granting to or obtaining for DHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and DHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to DHS.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.

(c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHS in this agreement.

(g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.

(2) DHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless DHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. DHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHS.

(2) Should any Intellectual Property licensed by the Contractor to DHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to DHS. DHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate DHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHS would suffer irreparable harm in the event of such breach and agrees DHS shall be entitled to

obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than DHS without prior written authorization from the DHS program contract manager.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

14. Documents, Publications and Written Reports

(Applicable to agreements over $5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds $5,000.

15. Dispute Resolution Process

a. A Contractor grievance exists whenever the Contract believes there is a dispute arising from DHS' action in the administration of an agreement. If the Contractor believes there is a dispute or grievance between the Contractor and DHS, both parties shall follow the procedure outlined below.

(1) The Contractor should first discuss the problem informally with the DHS program contract manager. If the problem cannot be resolved at this stage, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) The Contractor must prepare a letter indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the letter a copy of the Contractor's original statement of dispute with any supporting documents and a copy of the Branch Chief's response. This letter shall be sent to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division funding this agreement or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division funding this agreement or his/her designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division funding this agreement or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.

d. Unless otherwise stipulated by DHS, dispute, grievance and/or appeal correspondence shall be directed to the DHS program contract manager.

16. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives **$25,000 or more** from any State agency under a direct service contract; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives **less than $25,000** per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends $300,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to DHS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended $300,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the DHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHS program contract manager shall forward the audit report to DHS' Audits and Investigations Unit.

e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The DHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

   The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, DHS shall act upon the proposal within 60 days after receipt of the written proposal. DHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHS will initiate an amendment to this agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHS program funding this contract.

d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHS may terminate this agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHS shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, DHS may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until DHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

DHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHS. Negative performance evaluations may be considered by DHS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

25. Year 2000 Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHS or if IT equipment is procured.)

The Contractor warrants and represents that the goods or services sold, leased, or licensed to the State of California, its agencies, or its political subdivisions, pursuant to this agreement are “Year 2000 Compliant.” For the purposes of this agreement, a good or services is Year 2000 compliant if it will continue to fully function before, at, and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate, and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the Contractor.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. University of California Mutual Indemnification

(Applicable only to agreements entered with the Regents of the University of California or a University of California campus under its jurisdiction.)

a. The State and the Regents of the University of California shall mutually defend, indemnify and hold each other and their respective agencies, officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of either the State or the Regents of the University of California.

b. It should be expressly understood that the obligations hereunder shall be conditioned upon this contract being one that falls within the purview of Section 895 of the Government Code.

28. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

29. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

30. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

31. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

(1) Be necessary and reasonable for the performance of the agreement.
(2) Be determined in accordance with generally accepted accounting principles.
(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

32. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of $100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds $100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled “Certification Regarding Lobbying”) that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled “Standard Form-LLL ‘disclosure of Lobbying Activities’”) if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHS program contract manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Attachment 1

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Contractor	Printed Name of Person Signing for Contractor
Contract / Grant Number	Signature of Person Signing for Contractor
Date	Title

After execution by or on behalf of Contractor, please return to:

Department of Health Services
(Name of the DHS program providing the funds)
P.O. Box 942732
714 P Street
Sacramento, CA 94234-7320

Attachment 2

CERTIFICATION REGARDING LOBBYING

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: Year _____ quarter_____ date of last report_____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, If known:	Congressional District, If known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known:
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI):	b. Name and Address of Lobbying Entity (If individual, last name, first name, MI):

(attach Continuation Sheets(s) SF-LLL-A, If necessary)

11. Amount of Payment (check all that apply):	13. Type of Payment (check all that apply):
$_____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind, specify: Nature_____ Value _____	

14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11:

(Attach Continuation Sheet(s) SF-LLL-A, If necessary)

15. Continuation Sheet(s) SF-LLL-A Attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $19,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only

Authorized for Local Reproduction
Standard Form-LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.

2. Identify the status of the covered federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.

4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.

7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDFA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."

9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.

10. (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and renewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

Exhibit G

INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED CONTINUOUS NURSING

ICF/DD-CN

December, 2000

California Department of Health Services
Diana M. Bontá, R.N., Dr. P.H., Director

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Medi-Cal Policy Division

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Medi-Cal Benefits Branch

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INTERMEDIATE CARE FACILITY for the DEVELOPMENTALLY DISABLED - CONTINUOUS NURSING

Exhibit G

INTRODUCTION

In 1971, the Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) program was established. The enacting federal legislation provided for Federal Financial Participation (FFP) for ICFs/MR as an optional Medicaid service. Congressional authorization for ICF/MR services as a state plan option under Medicaid allowed states, including California, to receive federal matching funds for institutional services that had previously been funded with state or local government money.

A facility for persons with mental retardation is defined in federal regulation (42, Code of Federal Regulations [CFR], Section 435.1009) as a facility (or distinct part of a facility) that:

(a) Is primarily for the diagnosis, treatment, or rehabilitation for persons with mental retardation, and

(b) Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration for health or rehabilitative services to help individuals function at their greatest ability.

In California, the more general ICF/MR program has been further classified into subgroups that more clearly define the various types of services to be provided to developmentally disabled consumers, based upon their medical, social, and rehabilitative needs. The advantage of creating these subgroups is the ability to place consumers with similar needs together in one residence, consistent with the individual consumer's choice, thus facilitating the provision of appropriate services.

Two of these subgroups, Intermediate Care Facility for the Developmentally Disabled-Habilitative (ICF/DD-H) and ICF/DD-Nursing (ICF/DD-N), provide consumers with community placement in a 4-15 bed facility that allows more involvement in the residential community and the opportunity to gain the necessary skills to participate to the highest degree possible.

With the approval of this waiver, California will pilot the creation of another subgroup of ICF/MR care: ICF/DD-Continuous Nursing (ICF/DD-CN). These facilities will provide services similar to an ICF/DD-N services with the addition of 24-hour skilled nursing services (licensed vocational nurse and registered nurse) for those consumers whose medical conditions require continuous nursing care and observation. The ICF/DD-CN facility will provide these services for 4-15 consumers in a community-based living arrangement, with preference given to facilities serving 4-6 individuals.

Currently, consumers who require continuous skilled nursing services reside in a large developmental center, an acute care hospital, or a skilled nursing facility (nursing facility or subacute level of care). As such, placement is reimbursed as a state plan service and is eligible for FFP. Unfortunately, these placement options fail to provide the

consumer with the opportunity to fully integrate into the larger community and affords the consumer little opportunity to develop to their fullest capacity.

The pilot program will be conducted to explore more flexible models of health facility licensure to provide continuous skilled nursing care to developmentally disabled individuals in the least restrictive health facility setting. The pilot program will also evaluate the effect of providing this level of care in a small community-based facility on the heath, safety, and quality of life of the consumers, as well as the cost effectiveness of such care provided in this type of health facility.

The waiver is necessary due to the pilot program requirement contained in the enacting legislation, Assembly Bill (AB) 359 (Chapter 845, Statutes of 1999, Aroner). As such, the provision of these services will be available on a limited basis during the pilot period.

Exhibit G

CHAPTER 1

GENERAL INFORMATION

I. Program History and Background

AB 359 requires the Department of Health Services (DHS) to establish a waiver pilot program under the auspices of Section 1915(b) of the federal Social Security Act (the Act). This pilot program will provide for continuous (24-hour) skilled nursing care to medically fragile, developmentally disabled infants, children, and adults in a waiver facility (ICF/DD-CN), as a benefit of the Medi-Cal program.

The purpose of the pilot program will be to explore more flexible models of health facility licensure to provide continuous skilled nursing care and observation to developmentally disabled individuals in the least restrictive health facility setting. For those consumers without the option of home placement, an ICF/DD-CN placement may be a more preferred choice than a large institutional setting, such as a skilled nursing facility. The necessity of the waiver is due to the fact that the new model will be tested on a limited basis to a select number of consumers. Once evaluated as an appropriate health facility category for licensure and Medi-Cal reimbursement, ICF/DD-CN facility services may be implemented statewide as a state plan service, thereby precluding the necessity of a waiver.

A. ICF/DD-N Facilities

Pursuant to Health and Safety Code, Section 1250(h); and Title 22 California Code of Regulations (CCR), Sections 51343.2, 51164.2, and 51510.3, an ICF/DD-N is intended to serve the developmentally disabled individual in those situations where the consumer's medical condition does not medically require continuous skilled nursing, but the individual requires intermittent skilled nursing care, as well as developmental training and habilitative services. Such services are intended to be provided in a small community-based residence that allows the consumer the opportunity to participate in the residential community to the fullest degree possible.

ICF/DD-N facilities provide 8-hours per day of care and/or observation by licensed direct care staff with 24-hour licensed staff supervision.

ICF/DD-N facilities provide services for health care needs that are predictable and for which care can be planned, such as: the administration of supporting/stabilizing medication, tracheostomy care, naso-gastric or gastrostomy tube feeding, oxygen therapy, colostomy care, intermittent positive pressure breathing, wound irrigation and

dressings, urinary catheter care, and assistance with positioning for preventative skin care, etc.

In addition to meeting the consumer's health care needs, ICF/DD-N facilities provide developmental training, habilitative services, and active treatment to facilitate decreased dependence on others in carrying out activities of daily living, prevention of regression, and amelioration of developmental delay.

The developmentally disabled individual seeking admission to an ICF/DD-N facility under Medi-Cal reimbursement must demonstrate two or more developmental deficits in any one or combination of the following domains: self-help, social-emotional, or motor areas. Those consumers with a stage III or IV decubitus ulcer or a communicable disease are not eligible for admission.

B. ICF/DD-CN Facilities

The ICF/DD-CN level of services is intended to reimburse for continuous skilled nursing services which is currently not available in an ICF/DD-N facility under the Medi-Cal program.

It is the intent of this waiver to develop an ICF/DD-N setting with the addition of 24-hours skilled nursing care and observation for those consumers whose medical conditions do not require acute care but require 24-hours of skilled nursing care and/or observation for the individual to remain out of a large institution. ICF/DD-CN services will be provided in a small community-based residential setting, as noted in the description of an ICF/DD-N facility.

ICF/DD-CN facilities will provide services for health care needs that are either predictable or unpredictable. Because of the presence of 24-hour skilled nursing, the ICF/DD-CN facility will be able to provide medical and nursing care and support to those consumers who would otherwise be placed in a large institutional setting. Medical conditions appropriate for admission to an ICF/DD-CN may include, but are not limited to: tracheostomy care with or without ventilator dependence for all or part of the day; total parenteral intravenous therapy; frequent medical and/or nursing interventions such as respiratory therapy, renal or peritoneal dialysis, special feeding requirements, intravenous administration of medications, debridement, packing, and medicated irrigation of wounds; etc.

In addition to meeting the consumer's health care needs, the ICF/DD-CN will provide developmental training, habilitative services and active

treatment to facilitate decreased dependence on others in carrying out activities of daily living, prevention of regression, and amelioration of developmental delay.

The developmentally disabled individual seeking admission to an ICF/DD-CN facility under Medi-Cal reimbursement will be required to have two or more developmental deficits in any one or combination of the following three domains*:* self-help, social-emotional, or motor areas. In addition, the individual must have a medical condition that requires continuous skilled nursing care and observation. Consumers with a communicable disease will not be eligible for ICF/DD-CN admission.

C. The pilot program is intended to evaluate:

1. The effect of placement in an ICF/DD-CN on the health, safety, and quality of life of the consumer.

2. The cost effectiveness of placement in an ICF/DD-CN when compared to an institutional setting appropriate to the consumer's level of care.

II. General Description of the Waiver

A. The State of California requests a waiver under the authority of section 1915(b)(4) of the Act for a pilot program. The waiver program will be administered by the Medicaid agency.

B. This waiver is requested for a period of two years to become effective up to three months after the approval date from the Health Care Financing Administration (HCFA).

C. The waiver program will be called: **Intermediate Care Facility for the Developmentally Disabled-Continuous Nursing (ICF/DD-CN)**.

D. Geographical areas of the waiver program: The waiver will not be implemented statewide as it is designed as a pilot which will be tested at various sites throughout the State. No specific geographical areas have been designated for participation as facilities statewide will have the option of applying for participation.

E. The State contact person for this waiver is: Charles LaRosa at the Department of Health Services, who can be reached at (916) 657-0578.

F. Statutory authority: The State's waiver program is authorized under Section 1915(b)(4) of the Act, which provides that providers of waiver

services must meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan. Such standards shall be consistent with the requirements of Section 1923 of the Act, and be consistent with access, quality, and efficient and economic provisions of State Plan covered care and services.

G. Other statutory authority the State is relying on: California Welfare and Institutions Code, sections 14110.55, 14133.12, and 14495.10.

H. Sections waived: Relying on the authority of the above section, the State requests a waiver of the following sections of 1902 of the Act:

1. Section 1902(a)(1) – Statewideness. This section of the Act requires a Medicaid State Plan service to be available in all political subdivisions of the State.

   Because this waiver will be a pilot program, services of an ICF/DD-CN will not be available in all parts of the State.

2. Section 1902(a)(10)(B) – Comparability of Services. This section of the Act requires all services for categorically needy individuals to be equal in amount, duration, and scope.

   This waiver program will be implemented in a maximum of ten community facilities. Therefore, services provided under this waiver will not be available to all categorically needy individuals within the State.

3. Section 1902(a)(23) – Freedom of Choice. This section of the Act requires the Medicaid State Plan to permit all individuals eligible for Medicaid to obtain medical assistance from any qualified provider in the State.

   Under this waiver program, free choice of providers will be limited to only the specific health facilities that are selected to participate in the pilot program.

III. Program Goals

The goals of this waiver are:

A. To explore and test a new health facility licensure option that would allow individuals with developmental disabilities and the need for continuous skilled nursing care to reside in small, home-like, community-based

facilities and receive all necessary medical and nursing services as an alternative to placement in a large institutional setting.

B. To determine the effect of ICF/DD-CN placement on the welfare, safety, and health of the developmentally disabled consumer, and to determine if such placement is a feasible alternative to institutional placement in terms of delivery of appropriate and quality services to the consumer.

C. To determine the cost effectiveness of placement in an ICF/DD-CN facility and to determine if such placement is a feasible alternative to institutional placement in terms of overall costs to the State and to the federal government.

Exhibit G

CHAPTER 2

PROGRAM ADMINISTRATION

I. Single State Agency

DHS is the Medicaid single state agency and is charged with the administration of the State's Medicaid program (Medi-Cal in California). Within DHS, Medical Care Services is responsible for the overall management of the Medi-Cal program. The Medi-Cal Benefits Branch (MBB) of the Medi-Cal Policy Division (MCPD), the Medi-Cal Operations Division (MCOD), and the Licensing and Certification Program (L&C) will be responsible for the administration of the Section 1915(b) waiver. MBB will serve as the direct liaison between DHS and HCFA.

DHS will submit the Federal waiver application and notify all affected parties upon its approval. DHS will be responsible for enrollment of waiver providers, adjudication of requests for waiver services (Treatment Authorization Requests [TARs]), as well as the monitoring, oversight, and enforcement activities to ensure that the services provided comply with all federal and state requirements. DHS will also establish and utilize the appropriate systems to review the quality and appropriateness of all waiver services provided.

II. Role of Other Agencies

The California Department of Developmental Services (DDS) is charged with providing leadership and direction to ensure that individuals with developmental disabilities have the opportunity to make choices about their own lives, to be safe, to lead more independent, productive and happy lives, and to receive appropriate health care. Within that mission, DDS will participate in the development and implementation of the ICF/DD-CN waiver and provide general oversight through their regional centers, which provide direct case management services. In addition, DDS will have the following responsibilities:

A. Monitoring and oversight of the regional centers in relation to waiver services, including face-to-face quarterly monitoring, and special incident reporting and analysis.

B. Communication of information and/or issues raised by the regional centers to appropriate DHS representatives, as well as coordination of information from DHS to the regional centers.

C. Participation in the ICF/DD-CN Pilot Project Committee in a consultative role.

D. Participation in waiver training and technical assistance to providers, consumers, regional centers, or other entities as necessary.

Exhibit G

CHAPTER 3

ACCESS AND CAPACITY

I. Facility Selection Process

A. Application for Participation

All providers interested in participating in the pilot project must submit an Application for Participation for review and approval by the ICF/DD-CN Pilot Project Committee. The purpose of the Application for Participation shall include all of the following:

1. Communication of provider information necessary for the selection process.

2. Assurance that the provider meets all requirements for participation as specified in this document.

3. Agreement that all consumers residing in the facility will meet waiver requirements, for the duration of the pilot project. If, at any time during the period of the pilot, a consumer no longer meets waiver requirements, the facility agrees to facilitate relocation of the consumer to appropriate alternate placement and to notify DHS of the action taken and why.

4. Assurance that the provider will ensure that the health care and developmental needs of the consumers will be met, and that all state and federal laws and regulations will be followed.

5. Agreement to provide data and information, such as special incident reports, complaints or grievances, and cost reports, as determined by DHS to be necessary for evaluation of the pilot project.

B. ICF/DD-CN Pilot Project Committee

1. Role of the ICF/DD-CN Pilot Project Committee

The ICF/DD-CN Pilot Project Committee will be responsible for major project determinations. The Pilot Project Committee will include, but not be limited to, representatives from each of the following:

a. Department of Health Services'

- MCPD
- MCOD
- L&C
- Consultation with the Office of Legal Services, Managed Care Division, Payments Systems Division, and Audits and Investigation, as appropriate.

b. Consultation with the DDS, and

c. Consultation with the Association of Regional Center Agencies and representatives of the State's regional centers.

A discussion by the Pilot Project Committee will be required during the applicant selection process, and when imposing adverse actions, such as termination of pilot facility status. While DHS retains the authority of the single state agency to make all final decisions, the Pilot Project Committee will be responsible for providing adequate discussion and information to assure appropriate decisions. The Pilot Project Committee will initially meet on a weekly basis to review each applicant's qualifications, licensing and certification record, incident and/or complaint history, and appropriateness for participation in the pilot project. If the number of eligible applicants exceeds the structure of the pilot project, applicants demonstrating superior compliance with state and federal regulations (as demonstrated by their L&C history) will be preferentially selected.

Once the original pilot facilities have been selected, the Pilot Project Committee will reconvene as necessary for oversight purposes to monitor compliance with waiver requirements, to review special incident reports, complaints, L&C/MCOD findings, and to replace pilot facilities should withdrawal or termination occur.

C. Requirements for facility participation in the pilot project.

All of the following requirements must be met prior to the applicant facility being selected for participation in the pilot project:

1. The applicant facility must be a licensed health facility that meets the conditions for licensure as an ICF/DD-N. This requirement is necessary to ensure that the applicant can meet the basic statutory and regulatory requirements for providing services to the developmentally disabled consumer with nursing needs.

At the time of application, the applicant facility may be in any of the following categories:

a. ICF/DD-N that will be converted to an ICF/DD-CN.

b. Other licensed health facility that will be converted to an ICF/DD-CN.

c. An owner of an ICF/DD-N or other licensed health facility that wishes to open a new licensed facility for the purpose of waiver participation (for example, a corporation).

2. The applicant facility must demonstrate historical ability to comply with state licensing and federal ICF/MR certification requirements as evidenced by:

a. Compliance and competence in meeting applicable state licensing and federal certification requirements during the previous three years; or

b. If the applicant facility has been licensed for less than three years, the licensee (or corporation) must be able to demonstrate compliance and competence in meeting applicable state licensing and federal certification requirements at other health facilities operated by the licensee (or corporation) during the past three years.

3. The applicant must demonstrate all of the following, as determined by a L&C survey:

a. Physical Plant

(1) General

The applicant must:

Meet all requirements of the Federal ICF/MR regulations' Conditions of Participation (COP), Physical Environment [42, CFR, Sections 483.470(a)(1) through (k)(2)]. Standards include:

- Client living environment
- Client bedrooms
- Client bathrooms

- Heating and ventilation
- Floors
- Space and equipment
- Emergency plan and procedures
- Evacuation drills
- Fire protection
- Paint
- Infection control

(2) Power

The applicant must:

- Provide auxiliary lighting and power sources to operate all functions of the facility for a minimum of eight hours. The auxiliary system must be maintained in safe operating condition.

- Ensure that all portable equipment using 110-120 volt current is equipped with three wire grounded U.L. (Underwriters Laboratories) approved power cords and three prong cords.

(3) Space

The applicant must have:

- Designated clean and dirty utility areas.
- Wheelchair and portable medical equipment accessible hallways, doorways, entrances, and exits.
- Comfortable usage of furnishings to promote ease of nursing care and to accommodate the use of assistive devices, including but not limited to, wheelchairs, walkers, and patient lifts, when needed.
- No more than two clients per bedroom.
- Adequate space to avoid using bedrooms as a through passageway to another room, bath, or toilet.

b. Staffing

All applicants must be able to accommodate consumers with

24-hour skilled nursing needs. At a minimum, these include all of the following:

(1) Sufficient Registered Nurse (RN) and Licensed Vocational Nurse (LVN) staffing to allow a minimum of 5 hours per consumer per day of non-duplicated skilled nursing (RN and/or LVN) with a minimum of 2 hours of the 5 hours per consumer per day being non-duplicated RN staffing. All LVN staffing must be supervised by an RN who is available by telephone at all times.

(2) A minimum of one RN or one LVN awake and in the facility at all times.

c. Equipment and Supplies

The applicant must:

(1) Have a designated storage area that is adequate for needed medical equipment and supplies.

(2) Maintain a seven-day supply of all medical equipment and supplies necessary to meet client needs.

(3) Calibrate all gauging and measuring equipment on a regular basis, as specified by the manufacturer, and maintain records of the testing.

(4) Have a written manual pertaining to the use, care, cleaning, and maintenance of client care equipment and supplies, including but not limited to:

- Enteral feeding pumps
- Mechanical lifts
- Ventilators and related equipment
- Oxygen delivery systems
- Positive airway pressure equipment
- Suction machines
- Electric beds
- Electric chairs
- Intravenous infusion pumps
- Monitoring equipment

(5) Have sufficient medical gas storage to allow 24-hour per day ventilator operation for all consumers who are ventilator-dependent.

(6) Have a back-up ventilator for emergency use when there are ventilator-dependent consumers in the facility.

D. Disqualification of applicants (providers) and termination of facility participation in the pilot project.

1. An applicant may be disqualified and the Application for Participation denied if any one of the following conditions exist at the facility (if the applicant facility has been in operation for less than three years, the compliance history of existing health facilities operated by the licensee or corporation will be evaluated):

a. Inability to meet the same federal COP for the past 3 consecutive re-certification surveys. (Meeting the federal COP indicates a facility's ability to provide services consistent with federal standards.)

b. Condition level non-compliance with the federal COP for Health Care Services during the past 12 months. (Failure to meet the federal COP for Health Care Services indicates a facility's inability to provide health care services consistent with federal standards.)

c. Existence of a time-limited federal certification agreement of less than twelve months due to programmatic deficiencies.

d. During the past 12 months, the facility has received any Class AA, Class A, or Class B citations, as defined by Health and Safety Code, Sections 1424(d) and 1428(h) that pertain to patient care.

The presence of a Class B citation shall not, in itself, constitute the basis for pilot application denial. A Class B citation shall be evaluated for its impact on such areas as client care, client safety, fraud, and for indications of a pattern of noncompliance.

e. Any other condition or situation that indicates the applicant facility's inability to ensure the health and safety of it's residents, as determined by DHS.

2. An applicant may be terminated from participation in the pilot project if any one of the following conditions is found to exist at the ICF/DD-CN facility:

   a. Failure to meet waiver requirements as specified in this document.

   b. Failure to maintain ongoing compliance with the licensing requirements of an ICF/DD-N.

   c. Any other condition or situation that indicates the ICF/DD-CN facility's inability to ensure the health and safety of it's residents, as determined by DHS.

E. Waiver Provider Training.

Once the waiver is approved, DHS will sponsor an informative meeting for all interested providers to provide technical assistance in the application process and to answer questions regarding the waiver.

II. Consumer Participation

A. All consumers participating in the ICF/DD-CN pilot shall meet all of the following specific criteria:

1. Medi-Cal program eligibility. Consumers enrolled in managed care health plans that include coverage for long-term care shall not be eligible to participate in the pilot project.

2. Certified by the regional center as developmentally disabled as defined by state statute (Welfare & Institutions Code, Section 4512), and eligible for special treatment programs.

3. Enrolled in the regional center.

4. Medical necessity for continuous skilled nursing care and observation, as specified in Chapter 1, Section I.B.

5. Be free of clinically active communicable disease reportable under Title 17, CCR, Section 2500.

B. Role of Regional Centers

The regional centers have the responsibility for evaluation and certification of developmentally disability and eligibility for special treatment programs (documented with completion of the Health Services [HS] 231 form). For the purpose of this pilot project, the regional centers will retain the responsibility for completing the HS 231 form and providing the completed form to the waiver provider for submission with the TAR.

See Appendix I for a copy of the HS 231 form.

In addition, regional centers will maintain all of their current responsibilities for:

1. Service provision to individuals with developmental disabilities.

2. Case management.

3. Identification and referral of consumers for appropriate placement.

4. Service delivery monitoring as required by Title 17, CCR, Section 56103.

C. Role of Medi-Cal Operations Division (MCOD)

MCOD is the entity within DHS responsible for the adjudication of TARs for Medi-Cal services. As such, MCOD ensures that all consumers authorized for reimbursement for ICF/DD-CN services will meet waiver requirements.

1. Under the ICF/DD-CN pilot project, MCOD will have the following responsibilities:

    a. Receive the TAR for ICF/DD-CN services.

    b. Adjudicate initial and continuing service reauthorization TARs for medical necessity for ICF/DD-CN services, as well as compliance with waiver requirements.

    c. Approve, deny, modify or defer the TAR.

        (1) “Approve” means the TAR is approved as requested for reimbursement of ICF/DD-CN services.

(2) "Deny" means that the consumer does not meet waiver requirements and therefore, reimbursement of ICF/DD-CN services is denied.

(3) "Modify" means the TAR is approved in part, such as for a shorter length of time than requested. Such modification results in reimbursement to the provider for those parts of the TAR that are approved.

(4) "Defer" means the TAR is incomplete and unable to be adjudicated. The TAR is returned to the provider for additional information or clarification.

2. Each TAR for ICF/DD-CN services will be for a period of up to six months. Due to the fragile nature of these consumers, DHS has determined that monitoring of the consumer's condition and reauthorization of services shall take place at least every six months.

D. In addition to the criteria specified in Subsection A. above, both of the following criteria must also be met:

1. There must be a bed available in one of the ICF/DD-CN facilities selected for participation in the ICF/DD-CN pilot.

2. Cost neutrality of the ICF/DD-CN pilot shall be maintained.

III. Number of Pilot Facilities

Not more than 10 facilities, at any point in time, shall be enrolled in the ICF/DD-CN waiver pilot. As specified in AB 359, priority will be given to 4-6 bed facilities.

Exhibit G

CHAPTER 4

QUALITY OF CARE AND SERVICES

The State will have in place a formal system by which it monitors the health and safety of consumers served under this waiver. In addition, monitoring will ensure that individual plans of care are periodically reviewed and that the services provided are consistent with the identified needs of the consumers. Through these procedures, the State will ensure that services provided under the waiver are of the highest quality possible. The State further ensures that problems identified by this monitoring will be addressed in an appropriate and timely manner, consistent with the severity and nature of deficiencies.

I. Waiver Services/Plan of Care

An Individual Program Plan (IPP) will be developed by qualified individuals at the regional center and an Individual Service Plan (ISP) will be developed by the ICF/DD-CN. Development of these care plans shall include the consumer and/or consumer representative.

For purposes of this waiver document, statutory requirements will be met using the IPP, ISP, or the Annual Review Process. This process will be referred to as the "plan of care." The plan of care is the fundamental tool by which the State will ensure the health and welfare of the consumers receiving waiver services. As such, the plan of care will be subject to periodic review by DHS. These reviews will determine the appropriateness and adequacy of the waiver services and will ensure that the services are consistent with the nature and severity of the consumer's disability, as well as medical and nursing needs.

FFP will not be claimed for services that are not included in the plan of care.

II. Oversight and Monitoring Process

A. Role of the Regional Center/DDS

The oversight and monitoring process will begin with identification of a developmentally disabled consumer who qualifies for placement in an ICF/DD-CN facility. The regional center will maintain its case management responsibilities as is currently done for residents of ICF/DD-N facilities. Such case management will ensure appropriate placement, monitoring of the plan of care, and the receipt of appropriate services by the consumer. Regional centers will also maintain their authority and responsibility to relocate consumers should it appear they are at risk in the

ICF/DD-CN or if such placement appears to be inappropriate at any time, for any reason.

B. Role of MCOD

MCOD is assigned the responsibility of Medi-Cal utilization review via adjudication of TARs for waiver services provided in an ICF/DD-CN, as well as the implementation of the MCOD monitoring and oversight process. MCOD will work collaboratively with L&C, DDS, regional center representatives, and independently to ensure the implementation of the pilot project in accordance with Medicaid statute, regulations, waiver requirements, and to ensure the provision of appropriate and quality services to the consumer. MCOD responsibilities shall include:

1. Utilization review and adjudication of the TARs, as specified in Chapter 3, Section II.C.

2. Performance of independent and collaborative record and onsite monitoring reviews (announced and unannounced). Through the oversight of services provided in the ICF/DD-CN, MCOD will verify that services provided are specified in the plan of care, services were authorized on a TAR, and that the services are appropriate to the consumer's needs.

3. Monitoring of individual facilities in collaboration with L&C to ensure compliance with the participation agreement, as well as waiver requirements. Any potential licensing and certification problem identified with individual facilities will be referred by MCOD to L&C, within two working days, for investigation.

4. Reporting of relevant findings to the ICF/DD-CN Pilot Project Committee.

5. Referral of fiscal integrity or fraud issues identified during MCOD monitoring reviews, to DHS Audits and Investigations for follow-up.

C. Role of Licensing and Certification

In addition to Medi-Cal program oversight, L&C will be responsible for the following:

1. Determination that those facilities participating in the pilot project meet the conditions for licensure as an ICF/DD-N at the time of application. Such determination will ensure that basic plant and staffing requirements, as well as the facility's capacity to meet the

consumer's medical and other needs, as delineated in the plan of care, are met.

2. On a quarterly basis, L&C representatives will directly observe and evaluate the care and treatment provided to consumers, staff competency, and the quality of nursing oversight. This will include an evaluation of the ICF/DD-CN's ability to maintain compliance with the licensing requirements of an ICF/DD-N as well as the additional requirements identified in this document.

3. L&C staff will respond onsite to complaints and investigate facility problems identified by DHS, DDS, and others. The timeframes will be based on the severity of the complaint, as defined in the table below:

Waiver Facility Identified Problem	Investigation Initiation Timeframe
Immediate and Serious A situation in which pilot facility's practice has caused, or is likely to cause, serious injury, harm, impairment, or death to a client.	Two working days.
Not Immediate and Serious Any concern, or alleged failure by the facility to comply with any pilot waiver requirement.	Within five working days.

4. L&C's findings and recommendations will be reported to the ICF/DD-CN Pilot Project Committee.

D. Overall Monitoring of the Pilot Project

MBB staff will have overall monitoring and coordination responsibility via the ICF/DD-CN Pilot Project Committee. Such coordination will include at a minimum:

1. Oversight of the review of Applications of Participation and final designation of facilities as waiver facilities.

2. Oversight of complaints and problems identified with individual facilities or consumers referred to the Pilot Project Committee, and their outcome.

These monitoring activities will ensure that waiver consumers will be placed appropriately, will receive the appropriate services based upon the

plan of care and will be safe in the ICF/DD-CN setting. In addition, overall monitoring by MBB staff will ensure compliance with all federal and state laws and regulations, as well as waiver requirements.

III. Maintenance of Records

A. Regional centers/DDS shall maintain all records associated with developmentally disability certification, case management, and monitoring activities, including the plan of care.

B. MCOD will maintain records associated with authorization of services, including level of care determinations, the plan of care, TARs and associated documentation, monitoring reviews, and records of complaints, incidents, and inquiries received by MCOD staff.

C. MBB will have responsibility for maintenance of records associated with the Application of Participation. The Application of Participation will be reviewed and updated as needed every year for the duration of the pilot project. MBB shall also maintain records of complaints or identified problems submitted to the ICF/DD-CN Pilot Project Committee and their outcome.

IV. Request for Authorization for ICF/DD-CN Services

Upon selection as a waiver provider, the ICF/DD-CN facility will be enrolled in the Medi-Cal program and issued a provider identification number to allow billing for services. The process by which a waiver provider requests authorization for reimbursement of ICF/DD-CN services consists of all of the following:

A. Submission of a completed TAR to MCOD at the following address (directions for completion of the TAR may be found in the Medi-Cal provider manual):

Department of Health Services
Medi-Cal Operations Division
ICF/DD-CN Waiver Project
700 N. Tenth Street, Suite 104
Sacramento, CA 95814

The TAR shall be accompanied by all of the following information:

1. A copy of the completed plan of care, specifying services to be provided under the waiver.

2. A copy of the HS 231 form, documenting that the consumer has been certified as developmentally disabled and eligible for special treatment programs by the regional center, as specified in Chapter 3, Section II.A.

3. Documentation that the consumer is an enrolled client of the regional center.

4. Documentation to support medical necessity for continuous skilled nursing, if not specified on the plan of care.

See Appendix II for a copy of the TAR.

B. Review of the TAR and supporting documentation by MCOD Nurse Evaluators, either as a record review and/or on-site review at the ICF/DD-CN facility. Such a review will result in a decision of approve, deny, modify, or defer. These terms are defined in Chapter 3, Section II.C.1.c. If all or part of the request for authorization is approved, the period of authorization shall be for up to six months.

C. If all or part of the request for authorization is denied, both the provider and the consumer have appeal rights. These rights are specified in Chapter 6.

D. Waiver services shall be denied and the waiver terminated for individual consumers when one or more of the following occurs:

1. The consumer loses Medi-Cal eligibility.

2. The consumer or his/her legal representative elects, in writing, to terminate services.

3. The consumer wishes to move from the geographical area within which the waiver services are available or wishes to move into another area where there are either no waiver pilot providers, or no available beds at a waiver facility.

4. The consumer's condition changes such that he/she no longer meets waiver requirements for ICF/DD-CN services.

5. The facility is terminated as a waiver provider and alternate waiver providers are not available.

6. The consumer is no longer enrolled in the regional center.

7. The facility is unable to meet the consumer's needs placing the consumer's health and welfare at risk.

In the event of any of the above, the consumer and/or his/her legal representative will be informed by the regional center of the available placement options/services appropriate to the consumer's level of care, medical, and other needs. The regional center retains the responsibility for identification of, and arrangements for, alternate placement/services.

E. Waiver services will be terminated at the conclusion of the pilot project. At that point in time, the State will ensure that all consumers placed in an ICF/DD-CN, will be provided the choice of alternate placement or services funded by the Medi-Cal program that meet Medi-Cal requirements and that are appropriate to the consumer's level-of-care, medical, and other needs. DHS will coordinate with DDS, regional centers, and consumers and their representatives to determine appropriate placement/services at the conclusion of the pilot project. All provider and consumer rights under the State plan, consistent with all applicable state and federal laws and regulations, will be followed.

V. Health and Safety Issues

As described above, safeguards have been put into place to protect the health and safety of the consumers receiving waiver services, as well as to ensure the adequacy and appropriateness of services provided. Specifically, such safeguards will include consideration of:

A. Facility compliance with licensing requirements for an ICF/DD-N, as well as compliance with all waiver requirements.

B. Appropriate placement of the consumer.

C. Development of an appropriate plan of care.

D. Provision of timely and appropriate services as delineated on the plan of care (both preventative and treatment services).

E. Evaluation and re-evaluation of the consumer at appropriate intervals.

F. Appropriate staffing in the ICF/DD-CN to ensure both ongoing care and care required during periods of increased need and in emergencies.

G. Appropriate equipment (including back-up equipment and supplies) to ensure ongoing care, as well as care required during periods of increased need and in emergencies.

H. Sufficient facility resources to maintain the facility in a safe and workable condition on a daily basis as well as provisions for caring for the consumers in times of crisis or emergency.

I. Assurance that applicable federal and state laws and regulations will be adhered to.

Exhibit G

CHAPTER 5

REIMBURSEMENT

As required by sections 1905(b) and 1902(a)(32) of the Act, payment will be made by DHS directly to the providers of the waiver services. Payment for services in an ICF/DD-CN will be made through the HCFA approved Medicaid Management Information System (MMIS). In California, the MMIS is Electronic Data Systems, the fiscal intermediary agent for reimbursement of State plan services.

Daily rates have been established for services provided by the ICF/DD-CN facilities to waiver eligible consumers. Two separate rates for services provided at the ICF/DD-CN level have been developed; one for ventilator-dependant consumers and one for non-ventilator-dependant consumers. Separate rates were established in an effort to recognize the additional expenditures necessary to facilitate the needs of consumers using ventilators.

The methodology used to determine the per day rates for the ICF/DD-CN was based on the assumption that all physical plant requirements, non-medical supplies, and non-nursing staffing required for the ICF/DD-CN will be the same as currently required in the ICF/DD-N. Therefore, the base rate for the ICF/DD-CN will be the same as the established rate for a 4-6 bed ICF/DD-N. Reimbursement for the additional requirements have been added to that base rate as follows (assuming 5 consumers in residence at a facility):

I. Ventilator-dependent Consumers

The rate for ICF/DD-CN ventilator consumers has been increased by $36.56 per day, per consumer, to factor in the costs associated with the ventilator and associated equipment, such as back-up ventilator, parts, supplies, attachments, etc. ($30.47 per day for ventilator rental and $6.09 per day to factor in $1/5^{th}$ of the cost associated with the facility-required back-up ventilator).

II. Non-ventilator-dependent Consumers

The rate for ICF/DD-CN non-ventilator consumers has been increased by $6.09 per day, per consumer, to factor in $1/5^{th}$ of the cost associated with the facility-required back-up ventilator.

III. Nursing Staff Requirements

Nursing staff requirements that exceed the ICF/DD-N (8 hours licensed direct care staff/facility/day that equates to 1.6 hours/consumer/day for a facility with 5 consumers) have been incorporated into the rates.

Additional requirements included in the ICF/DD-CN rate are 5 hours/consumer/day of non-duplicated skilled nursing (RN and/or LVN) with a minimum of 2 hours/consumer/day, of the required 5 hours/consumer/day, of non-duplicated RN services. This additional staff is required for both ventilator-dependent and non-ventilator dependent consumers. The rate has been increased by $169.37 per day to factor in the additional nursing care needs.

The two per day rates have been determined as follows:

	Ventilator	Non-ventilator
Base Rate (Current per day ICF/DD-N rate)	$ 181.57	$ 181.57
Nursing Hours		
RN (2 hours/day)	81.14	81.14
LVN (3 hours/day)	88.23	88.23
Ventilator Equipment		
Primary equipment	30.47	NA
Backup equipment	6.09	6.09
Total (per consumer, per day)	$ 387.50	$ 357.03

Exhibit G

CHAPTER 6

COMPLAINTS, GRIEVANCES, APPEALS, AND FAIR HEARINGS

I. Complaints and grievances

Complaints and grievances may be investigated by the person or entity receiving them, or they may be referred to the ICF/DD-CN Pilot Project Committee for assistance. Reported complaints and grievances, including action, if any, shall be reported to the ICF/DD-CN Pilot Project Committee. Such complaints and grievances shall be logged and reviewed periodically for progress in resolution.

II. Appeals

Appeals are defined as one of the following:

A. A request by an applicant facility to reconsider the decision to deny the application to be a waiver provider. This type of appeal shall be referred to the ICF/DD-CN Pilot Project Committee for consideration.

B. A request by a waiver provider to reconsider a denial of all or part of a TAR for reimbursement for ICF/DD-CN services. This type of appeal shall follow the established appeal process, as specified in Title 22, CCR, Section 51003(g).

III. Fair Hearings

Fair hearings are defined as a request by the Medi-Cal beneficiary to reconsider a denial of all or part of a TAR for ICF/DD-CN services. Fair hearings shall follow the established process, as specified in Title 22, CCR, Sections 51014.1 and 51014.2, including notification.

Welfare and Institutions Code, sections 4710 through 4716, and Title 17, CCR, Sections 52172 through 52174, as appropriate, shall be utilized when a fair hearing is requested due to issues other than the denial of a TAR.

Exhibit G

CHAPTER 7

FISCAL IMPACT

This Document Prepared by:

Department of Health Services
Fiscal Forecasting Data and Management Branch

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Exhibit G

CHAPTER 8

EVALUATION OF PILOT

The State will contract to acquire an independent assessment of this waiver to evaluate the quality of care provided, access to healthcare services within the pilot project, health and safety of consumers, and cost-neutrality. The entity receiving the contract will evaluate data on only those facilities that participated in the pilot project for a minimum of six months. DHS will submit the results of the assessment to HCFA at least 90 days prior to the expiration of the initial waiver, and then again 90 days prior to the conclusion of the pilot.

DHS will contract with an outside contractor, university, or other entity outside of the State government consistent with the specifications in Section 2111(B), Part 2 of the State Medicaid Manual (HCFA Publication 45-4). The contractor will be responsible for meeting the following objectives:

- Evaluation and assessment of the facility selection process.
- Accumulation of data on the number of consumers in the state that would benefit, on an ongoing basis, from ICF/DD-CN services.
- Evaluation and assessment of each ICF/DD-CN consumer's access to healthcare services while residing in an ICF/DD-CN facility.
- Evaluation of the effects of the ICF/DD-CN program on consumer quality of life, including a consumer satisfaction survey.
- Evaluation and assessment of the quality of care provided to consumers participating in the pilot project, such as, increase/decrease in emergency services, hospitalizations, physician visits, mortality rates, etc.
- Evaluation of DHS monitoring efforts, facility compliance with waiver requirements, sanctions applied for non-compliance, etc.
- Evaluation of cost neutrality.

Exhibit F

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and two (2) copies. The original must bear the original signature of a person authorized to bind the Contractor. The additional copies may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (DHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of $** _____ and **dated** _____ . If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment, will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies or products offered or used in the performance of the above referenced contract meets or exceeds the minimum percentage of recycled material, as defined in Public Contract Code Sections 12161 and 12200.

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by DHS or purchased with or reimbursed by contract funds)

Unless DHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHS, at DHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

Contractor's Legal Name (As on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

DHS Distribution: Accounting (Original) Program CMU contract file

Exhibit H

ICF/DD-CN Pilot Program

Required Facility Reports

Monthly

- Attachment A: Staffing Log, complete as instructed.

- Attachment B: Admissions, Discharges and Hospitalizations Log, complete as instructed.

- Attachment C: Facility Resolved Grievance Log. Complete as per instructions contained in Exhibit E, page 2 Grievance Procedure.

- Attachment D: Monthly Log of Clinical Indicators. Complete as per attached instructions.

- Copies of:
  - Special Incident Reports sent to the Regional Center
    - Please send a copy of any Special Incident Reports (SIRs) completed during the month.
  - Inservice Training Logs
    - Please send a copy of inservice attendance sheets, include training topic on the form

Annually

Cost report due 150 days after the close of the pilot fiscal year. The pilot fiscal year begins with the day of enrollment in the pilot.

The monthly reports are to be mailed by the end of the month, for the month prior (e.g. September 30th for August) and annual cost report mailed to the:

Rate Development Branch
Freedom of Choice Waiver Unit
714 'P' Street, Room 1550
P.O. Box 9422732
Sacramento, CA 94234-7320
Attention: Monthly Reports, ICF/DD-CN Pilot Program

Or fax monthly reports only to: (916) 653-5066, Attention: Freedom of Choice Waiver Unit, ICF/DD-CN Pilot Program.

Exhibit E
Additional Provisions

1. Incorporated Exhibits Continued

   A. The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:
      1) Exhibit G – Intermediate Care facilities for the Developmentally Disabled-Continuous Nursing (ICF/DD-CN) December, 2000 waiver document, 36 pages.
      2) Exhibit H – Required Facility Reports one page and Attachments A through D:
         - Attachment A, Staffing Log consisting of one page,
         - Attachment B, Admissions, Discharge and Hospitalizations consisting of one page,
         - Attachment C, Facility Resolved Grievance log consisting of one page and
         - Attachment D, Monthly Log of Clinical Indicators consisting of four pages.

   B. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by the Department of Health Services (DHS), as required by program directives. DHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. DHS will maintain on file, all documents referenced herein and any subsequent updates.
      1) Expired, non-promulgated, draft ICF/DD-N regulations, Title 22, Chapter 4.5 and Sections 73800-73956.

2. Contract Amendments

   Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

3. Cancellation/Termination

   A. This agreement may be canceled by the State <u>without cause</u> upon 30 calendar days advance written notice to the Contractor.

   B. DHS reserves the right to cancel or terminate this agreement immediately

for cause. The Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions and/or responsibilities of the contract.

D. From (Exhibit G) the waiver document page 24, Chapter 4, Section IV, E:

Waiver services will be terminated at the conclusion of the pilot project. At that point in time, the State will ensure that all consumers placed in an ICF/DD-CN, will be provided the choice of alternate placement or services funded by the Medi-Cal program that meet Medi-Cal requirements and that are appropriate to the consumer's level-of-care, medical, and other needs. DHS will coordinate with the Department of Developmental Services, regional centers, and consumers and their representatives to determine appropriate placement/services at the conclusion of the pilot project. All provider and consumer rights under the State plan, consistent with all applicable state and federal laws and regulations, will be followed.

4. Patient Complaints and Grievances

1. Consumer Rights

The Contractor shall adopt and post in a conspicuous place a written policy on consumer rights in accordance with Title 22, Section 73909 and section 2 below. The Contractor shall also post the phone number of Licensing and Certification Program, Developmental Services-Consultation and Support Team (DS-CAST) Unit, (916) 324-5900, for complaints of consumers and their related parties. Complaints regarding substandard conditions will be investigated by the DS-CAST unit.

2. Grievance Procedure

The Contractor shall establish and maintain a procedure for resolving beneficiary (consumer) grievances. The grievance procedure shall include, as a minimum, the following points:

a. A log (Attachment C of Exhibit H) that contains a recording of all grievances received, including information sufficient to identify the grievant, date of receipt, nature of the problem, date and resolution or disposition of the grievance. This log is to be updated monthly and a copy sent to the Freedom of Choice Waiver as a Required Facility Report as per Exhibit H. This record and related documents, except for those subject to the attorney-client privilege or the protection afforded medical staff records under California law, shall be open to inspection by the DHS and the federal

Department of Health and Human Services (DHHS) for a period of four years.

b. A finding of fact and resolution within thirty (30) days of receipt of the grievance.

c. In those cases where the grievant is not identifiable, or when the problem cannot be resolved, notations to that effect shall be entered in the record. Include the reasons why the grievance could not be resolved and the name of the individual responsible for that decision.

d. A Grievance Coordinator shall be designated to assist the grievant and to act as a liaison to the Pilot Project Committee.

5. Contractor Facility Information Required

Contractors will comply with and make available to inspection by DHS documents as required in Health and Safety Code Section 1265 (h) as evidence of right to possession of the facility.

Exhibit H, Attachment D

ICF/DD-CN Pilot Program

Monthly Log of Clinical Indicators

Unexpected and New Onset Since ICF/DD-CN Admission

Facility: _____

Clinical Indicator Items	***New per Month and Resolving New Onsets from Prior Months***						***Comments***
	Month:		***Month:***		***Month:***		
	Consumer	***# of occurrences***	***Consumer***	***# of occurrences***	***Consumer***	***# of occurrences***	
Infections							
Pressure Ulcers							
Fecal Impaction							
Dehydration							
Unplanned Weight Loss							
	Month:		***Month:***		***Month:***		

	Consumer	***# of occurrences***	***Consumer***	***# of occurrences***	***Consumer***	***# of occurrences***	
Tracheostomy Displacement							
Gastrostomy Displacement							

ICF/DD-CN Pilot Program
Monthly Log of Clinical Indicators

Unexpected and New Onset Since ICF/DD-CN Admission

Directions for completion:

1) Definitions (from the October 1995, Long Term Care Facility, Resident Assessment Instrument (RAI) User's Manual):
   - ***Infections***: Includes chronic and acute ***symptomatic*** infections(s) in the last month ***only if*** there is ***current supporting documentation and/or significant laboratory findings*** in the clinical record. This includes but is not limited to antibiotic resistant infections, clostridium dificile, conjunctivitis, pneumonia, other respiratory infection or urinary tract infections.
   - ***Pressure ulcers***: Any lesion caused by pressure resulting in damage of underlying tissues. Other terms used to indicate this condition include bed sores and decubitus ulcers.
     - Stage 1 – A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved.
     - Stage 2 – A partial thickness loss of skin layers that presents clinically as an abrasion, blister or shallow crater.
     - Stage 3 – A full thickness of skin is lost, exposing the subcutaneous tissues. Presents as a deep crater with or without undermining adjacent tissue.
     - Stage 4 – A full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone. If necrotic eschar is present, prohibiting accurate staging, the ulcer is a Stage 4 until the eschar has been debrided (surgically or by other means) to allow staging.
   - ***Fecal Impaction***: The presence of hard stool upon digital rectal exam. Fecal impaction may also be present if stool is seen on abdominal x-ray in the sigmoid colon or higher, even with negative digital exam or documentation in the clinical record of daily bowel movement.
   - ***Dehydration***: Fluid output exceeds intake. Indicators include:
     - Consumer takes in less than the recommended 2500ml (for adults) of fluids daily (water or liquids in beverages and water in food).
     - Consumer has clinical signs of dehydration.
     - Consumer's fluid loss exceeds the amount of fluids he or she takes in (e.g., loss from vomiting, fever, diarrhea that exceeds fluid replacement).
   - ***Unplanned Weight Loss***: Loss of 5% or more of consumer's body weight in the last month or 10% or more in the last six (6) months.

2) Same form can be used for three months. Complete and send in monthly. Start new log every three months.

3) Form is designed for a new onset of any clinical indicator for up to six consumers in any given month e.g. an outbreak of an upper respiratory infection affecting all the consumers in your home. It is hoped that this feature is rarely utilized. Form also allows tracking through resolution of each clinical indicator.

4) Consumer identification: This goes in the ***Consumer*** column. Please use the last four digits of the consumer's social security number.

5) Do not document clinical indicators present on admission e.g. a consumer admitted for wound care for a stage III pressure ulcer would not have that pressure ulcer noted on the log. Document clinical indicator conditions with an onset after admission to the ICF/DD-CN and continue to track those post-admission onset conditions until resolved.

Example #1: Consumer with an unplanned weight loss with onset 4 months after admission to the ICF/DD-CN. The consumer continues to lose weight for a second month. Document the consumer identification in the first column for that month on the same row, next column for that month list '1'. Repeat this on the same row for the next month.

Example #2: A consumer develops three pressure areas a month after admission to the ICF/DD-CN. Document the consumer identification and list '3' for that month. The next month one pressure ulcer is healed, one that same row for the next month repeat the consumer identification and list '2'. Continue to list the number of non-resolved pressure ulcers until all are healed.

Example #3: A consumer begins a medically ordered or voluntary and medically supervised weight loss program. Do not list consumer on the log for weight loss because the weight loss is not unexpected.

Example #4: A consumer is admitted with three Stage 2 pressure ulcers. Document nothing for pressure ulcers on the log that month. The next month one of the Stage 2 ulcers worsens to a Stage 3, the others are improving. For the log this second month document the consumer's identification and a "1" for the one pressure ulcer that worsened. In the comments section note that this was a Stage 2 on admit.

6) The monthly reports are to be mailed by the end of the month, for the month prior (e.g. September 30th for August) to:

Rate Development Branch
Freedom of Choice Waiver Unit
714 'P' Street, Room 1550
P.O. Box 942732
Sacramento, CA 94234-7320
Attention: Monthly Reports, ICF/DD-CN Pilot Program

Or fax to: (916) 653-5066,
Attention: Freedom of Choice Waiver Unit-ICF/DD-CN Pilot Program

Exhibit H
Attachment C
ICF/DD-CN Pilot Program
Facility Resolved Grievance Log

Facility name: _____
Grievance Coordinator: _____

Grievant Name Relationship to Consumer Consumer Name	***Date Grievance Received***	***Nature of Problem***	***Grievance: Fact Finding Resolution, Outcome, Action Plan (attachments OK)***	***Date Resolved***	***Action Plan to prevent recurrence And Comments***

Exhibit B
Budget Detail and Payment Provisions

1. Payment

Provision of Intermediate Care Facility for the Developmentally Disabled, Continuous Nursing (ICF/DD-CN) waiver services, enrollment of waiver eligible beneficiaries, nor payment for waiver services can begin until the following contingencies are met:

A. The provider successfully passes the Licensing and Certification initial waiver compliance visit,
B. The provider has met the staffing requirements of the waiver,
C. The provider has discharged all facility consumers who do not meet the eligibility criteria in the waiver,
D. The provider agreement has been signed by the Department of Health Services (DHS).

Licensing and Certification Division will submit to the Medi-Cal Policy Division a HCFA 1539 form with the date conditions one through three are met as the waiver enrollment date of the provider. Provision of waiver services, enrollment of beneficiaries and payment for services may begin on the latter of the date on the HCFA 1539 form or the date DHS signs the provider agreement.

As required by sections 1905(b) and 1902(a)(32) of the Social Security Act, payment will be made directly to providers for services in an ICF/DD-CN through the Medicaid Management Information System (MMIS). In California, the MMIS is Electronic Data Systems (EDS), the fiscal intermediary agent for reimbursement of State Plan services.

Daily rates have been established for services provided by the ICF/DD-CN facilities to waiver eligible consumers. Two separate rates for services provided at the ICF/DD-CN level have been developed; one for ventilator-dependant consumers and one for non-ventilator-dependant consumers. Separate rates were established in an effort to recognize the additional expenditures necessary to facilitate the needs of consumers using ventilators.

The rates are as follows;

	Ventilator	Non-ventilator
Per consumer per day:	$ 387.50	$ 357.03
Bedhold:	$ 382.65	$ 352.18

Each ICF/DD-CN facility will be enrolled in the Medi-Cal program and issued an ICF/DD-CN provider identification number to allow billing for services. The process by which a waiver provider requests authorization for reimbursement of

ICF/DD-CN services consists of submission of a completed Treatment Authorization Request (TAR) to Medi-Cal Operations Division (MCOD) at the following address (directions for completion of the TAR may be found in the Medi-Cal provider manual):

Department of Health Services
Medi-Cal Operations Division
ICF/DD-CN Waiver Project
700 N. Tenth Street, Suite 134
Sacramento, CA 95814

Review of the TAR and supporting documentation by MCOD Nurse Evaluators, will occur either as a record review and/or on-site review at the ICF/DD-CN facility. Such a review will result in a decision of approve, deny, modify, or defer. These terms are defined in Chapter 3, Section II.C.1.c of the waiver document (Exhibit G). If all or part of the request for authorization is approved, the period of authorization shall be for up to six months.

Exhibit A
Scope of Work
03/21/02 - 12/31/02

1. Provider agrees to provide to the Department of Health Services (DHS) the services described herein:

   - Provide for health care and developmental needs of pilot program eligible consumers in accordance with the requirements as set forth in the Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN) December 2000 waiver (Exhibit G) and in compliance with all applicable state statutes such as those in the Health and Safety Code, the Welfare and Institutions Code, and the Business and Professions Code, and any applicable regulations, including those in Title 16, 17 and 24 of the California Code of Regulations, federal ICF/MR regulations, 42 CFR and voluntary compliance with the provisions of the expired ICF/DD-N Regulations (Title 22, Chapter 4.5 & 73800-73956).
   - Provide to DHS, for evaluation of the pilot program, the Required Facility Reports as described in Exhibit H.
   - Facilitate relocation of the consumer, if, at any time during the period of the pilot, a consumer no longer meets waiver requirements. The consumer will be relocated to an appropriate alternate placement and DHS will be notified of the action taken and why.

2. The services shall be performed at 4J's Home, 3035 Fleetwood Drive, San Bruno, California, 94066.

3. The services shall be provided on a 24-hour continuous basis for skilled nursing care according to the requirements set forth in the Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN) December 2000 waiver document (Exhibit G), Chapter 3, Section I, C, 3 (b) Staffing, Pages 13 and 14.

4. The project representatives during the term of this agreement will be:

Department of Health Services	**Contractor**
Sandra Ortega, Chief Freedom of Choice Waiver Unit (916) 657-0578 fax: (916) 653-5066	

Direct all inquiries to:

Department of Health Services **Contractor**
Freedom of Choice Waiver Unit
Sandra Ortega, Chief
714 P Street, Room 1400
Sacramento, CA 95814

(916) 657-0578
fax: (916) 653-5066

5. While participating in the Intermediate Care Facility for the Developmentally Disabled-Continuous Nursing pilot program the participating facility will have its current state facility licensure suspended. A facility disqualified from participation in the Pilot Program will have its state facility license reinstated by the Department upon verification of compliance with Section 1265 of the Health and Safety Code for the balance of time remaining on the license when the facility began participation in the pilot program.

6. On a quarterly basis, DHS Licensing and Certification division representatives will directly observe and evaluate the care and treatment provided to consumers, staff competency, and the quality of nursing oversight. This will include an evaluation of the ICF/DD-CN's ability to maintain compliance with the licensing requirements of an ICF/DD-N as well as the additional requirements identified in the Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN), December 2000 waiver document (Exhibit G).

7. See the Intermediate Care Facility for the Developmentally Disabled Continuous Nursing (ICF/DD-CN), December 2000 waiver document (Exhibit G) for specifics of ICF/DD-CN Pilot Program requirements, including but not limited to:
    1. Section I (C) 3a, Physical Plant:
       Pages 15 and 16.
    2. Section I (C) 3b, Staffing:
       Pages 16 and 17.
    3. Section: I (C) 3c,Equipment and Supplies:
       Pages 17 and 18.
    4. Section I (D), Disqualification of providers and termination of facility participation in the pilot project::
       Pages 18 and19.
    5. Section II (A), Consumer Participation:
       Page 19, 26 and 27.
    6. Section V, Health and Safety Issues:
       Page 27 and 28.
    7. Chapter 5, Reimbursement:
       Pages 29 and 30.
    8. Section IV (E), Conclusion of Pilot:
       Page 27.

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (DHS Rev 6/02)

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
California Department of Health Services also referred to as DHS

CONTRACTOR'S NAME

2. The term of this Agreement is: through

3. The maximum amount of this Agreement is: **$**

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	X pages
Exhibit A, Attachment I – Work Plan	X pages
Exhibit B – Budget Detail and Payment Provisions	X pages
Exhibit B, Attachment I – Budget (Year 1)	X page
Exhibit B, Attachment II – Budget (Year 2)	X page
Exhibit B, Attachment II, Schedule 1 – Subcontractor Budget (Year 2)	X page
Exhibit B, Attachment III – Budget (Year 3)	X page
Exhibit C * – General Terms and Conditions	GXX X01 dated X/XX/01
Exhibit D(X) – Special Terms and Conditions (Attached hereto as part of this agreement)	XX pages
Exhibit E – Additional Provisions	X pages
Exhibit F – Contractor's Release	X pages
Exhibit G – Travel Reimbursement Information	X pages

See Exhibit E, Provision 1 for additional incorporated exhibits.

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at http://www.ols.dgs.ca.gov/Standard+Language/default.htm.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME
California Department of Health Services or DHS

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING
Edward Stahlberg, Chief, Program Support Branch

ADDRESS
1800 3rd. Street, Rm. 455, P.O. Box 942732, Sacramento, CA 94234-7320

California Department of General Services Use Only

☐ Exempt per:

Name of facility: _____

APPLICANT INFORMATION

This form is intended for any individual owning an applicant facility; and for each partner, each director, each officer of a corporation or management company under contract, each limited liability company; and each person having a beneficial interest of 5 percent in the applicant corporation or partnership of a skilled nursing facility (SNG) or intermediate care facility (ICF) or a beneficial interest of 10 percent in the applicant corporation, partnership, limited liability company, or any other category of health facility.

In addition to completion with an application package, the HS 215 form should be completed for disclosure purposes when changes are reported in officers, directors, purchase of stock, etc., as required by law, even though no change of ownership is occurring.

IDENTIFYING INFORMATION

Name		Title
Date of birth	Federal Employer's Tax ID number	Driver's license number

Business address

Marital status	American citizen	Sex
☐ Married ☐ Divorced ☐ Single ☐ Separated	☐ Yes ☐ No—explain:	☐ Male ☐ Female

Other name(s) used

Spouse's name

Military service	If yes, indicate branch of military		
☐ Yes ☐ No	Date started	Date ended	Type of discharge

CURRENT OWNERSHIP STATUS

☐ Yes ☐ No Are you a director, officer, partner, or shareholder holding 5 percent or more beneficial ownership interest in any other corporation, partnership, or limited liability company that operates, manages, conducts, maintains, or has established a SNF, ICF, residential care facility for the elderly, or community care facility, or is holding 10 percent or more beneficial ownership interest in any other category of health facility in this state? If yes, please list all names and addresses and Federal Employer's Tax ID numbers. Briefly describe your position or ownership interest. Include the percentage of ownership you hold. (Health and Safety Code, Sections 1253 and 1267.5.)

OTHER FACILITY OWNERSHIP

What other health facilities, clinics, home health agencies, community care facilities, or residential care facilities for the elderly have you been licensed for, operated, managed, held a 5 percent or more ownership interest in if an SNF or ICF applicant or 10 percent or more ownership interest in if other facility category applicant, or served as a director or officer? List facility address, nature of involvement, and dates of involvement. Include both in and out of California. Use attachment(s) as necessary.

ADVERSE ACTION

Have you ever been licensee, director, manager, or held a 5 percent interest in a health facility, clinic, home health agency, community care facility, or residential care facility for the elderly in any state or as an applicant for any other licensing category held a 10 percent or more interest, been a member of the governing body, director, or administrator of any health facility or community care facility, which has had a license revocation action filed, license placed on probation, suspended, or revoked whether stayed or not or for SNFs and ICFs resolved by settlement, receiver appointed, or when a final Medi-Cal decertification action was taken?

☐ Yes ☐ No If the answer is yes, please attach additional information, include all ownership and facility information including dates and any final action.

CIVIL AND CRIMINAL RECORD

☐ Yes ☐ No Have you ever been convicted of an offense other than a minor traffic violation(s)?

☐ Yes ☐ No Has there been a judgment against you for fraud, misrepresentation, libel, or slander?

☐ Yes ☐ No Were you ever voluntarily committed or involuntarily detained in any facility or institution?

If any answer is yes, please explain; use additional sheets, if necessary.

BUSINESS EXPERIENCE

A. Have you owned or operated any business? ☐ Yes ☐ No

Type	Number of Employees	Your Title	Start	End	Reason
1.					
2.					
3.					

B. Do you have any professional license(s) or certificate(s)? ☐ Yes ☐ No

Type	Period Held	Issuing Agency
1.		
2.		
3.		

C. Are you a member of any professional/technical association(s)? ☐ Yes ☐ No

Association Name	Address
1.	
2.	
3.	

EMPLOYMENT SUMMARY (For last 10 years. Add additional pages if necessary.)

Dates	Name and Address of Employer(s)	Basic Duties	Reason for Termination
From			
To			
From			
To			
From			
To			
From			
To			

Note: Include activities during periods of unemployment.

I declare under penalty of perjury that the statements on this form and any accompanying attachments are correct to the best of my knowledge.

Signature	Date
➤	

RELEASE OF INFORMATION STATEMENT

The information provided on this form is mandatory and is necessary for licensure approval. It will be used to determine individual applicant's or applicant facility's ability to provide health services. The information is requested by the Department of Health Services, Licensing and Certification, in accordance with Health and Safety Code, Sections 1212, 1253, 1265, 1267.5, and 1278, and California Code of Regulations (CCR), Title 22, Sections 70107, 71107, 73205, 74105, 76205, and 78205.

Failure to provide the information as requested may result in nonissuance of a license or license revocation.

The information is considered public information and will be made available to the public upon request. The information shall be included and maintained in the individual facility's public files located in Licensing and Certification district offices.

Facility: _____

D. Letter of Support

Obtain a letter of support for your participation in the ICF/DD-CN Pilot Program from your Regional Center.

Include the letter of support from the regional center with this application.

All applications must be received by 5:00 PM November 23, 2001.

Facility: _____

C. Auxiliary Power

The ICF/DD-CN December, 2000 waiver document (page13) requires that the applicant must provide auxiliary lighting and power sources to operate all functions of the facility for a minimum of eight hours. The auxiliary system must be maintained in a safe operating condition.

Does your facility have the equipment and/or systems to meet this requirement?

Check one:

___Yes. Describe the equipment and/or systems your facility has in place to meet this requirement.

___ No. Explain how you plan to meet this requirement by the time of the Licensing and Certification (L&C) initial visit.

(The L&C initial visit to verify compliance with this and all other waiver requirements is the final component of the application process.)

You may enter your response on this sheet or you may use an attachment. Attach workplan proposals and/or specifications (from the operating manuals or receipts) describing the equipment and/or systems.

Facility:_____

B. Consumer Placement

Respond on this form or use an attachment.

1. The ICF/DD-CN December, 2000 waiver document (page 16) requires that consumers enrolled in managed care health plans that include coverage for long-term care shall not be eligible to participate in the pilot program. If a consumer you are considering for admission is in a Medi-Cal managed health care plan, describe the procedures your facility will take to ensure that the consumer is eligible to participate in the pilot. (i.e. plan does not include long term care coverage).

2. List seven occurrences that would disqualify a consumer from continuing to participate in the ICF/DD-CN pilot program (cause a denial of waiver services).

3. If, at any time during the pilot, a consumer no longer meets waiver requirements, describe the steps your facility will take.

Attachment A

Facility: _____

A. ICF/DD-CN Program Description

Provide a written description of the following elements.
Respond on a separate attachment.

1. Sample of projected staffing pattern, according to license capacity but performing CN level of service for a one-week schedule for the following staff:
   - Registered Nurse
   - Licensed Vocational Nurse and/or Licensed Psychiatric Technician
   - Attendants

2. Profile of projected target population consumers' needs:
   - Acuity level/medical needs
     - Target population identified
     - Predictable needs
     - Unpredictable needs
     - MD orders that reflect the need for continuous nursing
     - Medical Plan of Care supports continuous nursing
   - Nursing Service needs
     - Licensed Nurse competencies and direct care staff skill level parallel anticipated acuity level of target population
   - Potential referral sources (facilities, agencies) for admissions, including those you have an established relationship with
   - Appropriate 24-hour community resources for target population for emergency and ongoing medical care. Include medical and ancillary care providers with whom you have already established a relationship

3. Profile of projected developmental programming, appropriate to projected medical conditions and the anticipated age range of consumers and include the frequency at which each of the programs will be provided. Also discuss meeting needs for self-determination as appropriate:
   - Activity programs
   - Training / Education programs
     - Self-care
     - Behavioral
     - Other
   - Sensory Stimulation programs

APPLICATION FOR PARTICIPATION IN THE ICF/DD-CN PILOT PROJECT

(See instructions page)

1. Applicant's Name(s)	1A. Federal Employer's Tax ID Number:

2.Check Type of Ownership

☐ a. Individual ☐ b. Partnership ☐ c. Nonprofit Corporation ☐ d. Limited Liability Company

☐ e. Profit Corporation ☐ f. County ☐ g. Other Public Agency

3. Applicant Address	City	State	Zip Code	Telephone Number ( )

4. Facility (or Agency) Name

5. Facility Location	City	State	Zip Code	Telephone Number ( )

6. Facility Mailing Address (if different)	City	State	Zip Code

7. Name of Person in Charge of Facility	Title

8. Facility Capacity	9. Age Range of Consumers

10. Current Facility Licensure:

- ❑ ICF/DD-N — License Number: _____
- ❑ ICF/DD-H
- ❑ Other (Name):_____

11. CIVIL AND CRIMINAL RECORD

A. Have you or any officer, director, shareholder with a beneficial interest exceeding 10 percent, or person in charge of the facility, ever been convicted of an offense other than minor traffic violations? ☐ Yes ☐ No

B. Has there been a judgment against you or any officer, director, shareholder with a beneficial interest exceeding 10 percent, or person in charge of the facility, for fraud, misrepresentation, libel, or slander?

? Yes ? No

C. Were you or any officer, director, shareholder with beneficial interest exceeding 10 percent, or person in charge of the facility, ever voluntarily committed or involuntarily detained in any facility or institution?

? Yes ? No

(If you answered "Yes" to any of the above, please explain on additional sheet)

_____

12. ATTACHMENTS:

Complete and include with this application the following:

Attachment A: ICF/DD-CN Program Description
Attachment B: Consumer Placement
Attachment C: Auxiliary Power
Attachment D: Letter of Support

13. STATEMENT OF RESPONSIBILITIES

If chosen as a participating facility in the ICF/DD-CN Pilot Project, I (we) accept responsibility to:

A. Comply with local ordinances concerning zoning, sanitation, building and other appropriate ordinances.

B. Comply with the Labor Code on employment practices concerning nondiscrimination, liability insurance, wages, hours and working conditions.

C. Comply with terms of the ICF/DD-CN Pilot Project waiver as stated in the facility agreement and other codes or regulations identified therein.

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14. RELEASE OF INFORMATION STATEMENT

The information provided on this form to the Department of Health Services is mandatory for consideration in the ICF/DD-CN pilot project. It will be used to determine each individual applicant's or applicant facility's ability to provide health services consistent with the terms of the waiver.

Failure to provide the information requested will result in disqualification for participation in the ICF/DD-CN pilot project.

The information is considered public information and will be made available to the public upon request. The information shall be included and maintained in the individual facility's public files located at the Waiver Development Unit, Department of Health Services, 714 P Street, Room 1400, Sacramento CA. 95814.

A LIMITED LIABILITY COMPANY is required to provide the following additional information: Articles of Incorporation, Operating Agreement (if one exists), current list of each member and holder of economic interest and their contribution and share, current list of any manager(s), Secretary of State filing statement under Corporation Code Section 17060, and Company Officers.

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15. **Provide Proof of Criminal Record Clearance for facility licensee, facility administrator or manager, board members and corporate officers, all direct care staff, including licensed personnel, any adult living at the facility and consultants employed by the facility. See attached packet for detailed instructions.** For each of the above noted personnel, please provide one of the following: Clearance notification from DHS, a DHS transmittal application (HS 322) stamped with the clearance date, CNA or HHA certification reflecting clearance date or L&C IVRU verification number or you must submit completed fingerprint cards or a duplicate copy of the Live Scan form BCII (10/98). For any employees hired after making application to the pilot, the above information is required at the time of the initial L&C visit.

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16. **I (we) declare under penalty of perjury that the statements on the application and on the accompanying attachments are correct to my (our) knowledge.**

Signed _____ **Title** _____ **Date** _____

Signed _____ **Title** _____ **Date** _____

Signed _____ **Title** _____ **Date** _____

Signed _____ **Title** _____ **Date** _____

INSTRUCTIONS FOR APPLICATION FOR PARTICIPATION IN THE ICF/DD-CN PILOT PROJECT

Type or print clearly. Prepare application in duplicate. Return original and maintain a copy for your records. Attach with the application a copy of forms and documents requested below if applicable.

1. **Applicant(s):** Enter the legal person(s) or organization responsible for the facility. Enter full names, individuals enter first, middle and last name. Husband and wife, if joint applicants, include both names. If an update is needed to your current licensure application, individuals, each partner, principal officers of corporations and limited liability companies must complete *Applicant Information* (HS 215). Corporations, other business entities, and other organizations must also complete *Administrative Organization* (HS 309).

1A . **Federal Employers Tax Number:** Enter your Federal Employer's Tax Number.

2. **Check Type:** Check the type of facility making application.

3. **Applicant Address:** Enter home address of individual, corporation, or major partner. Enter area code with telephone number.

4. **Facility Name**: Enter the facility's name. If an agency, fill in the name providing the services.

5. **Facility Location:** Enter the physical location for the facility. Enter area code with telephone number.

6. **Facility Mailing Address:** Please complete if different than item five**.**

7. **Person in Charge of Facility:** Enter person's name who will directly supervise the facility. If not yet employed, enter "unknown."

8. **Facility Capacity**: Enter maximum total number of consumers that may be provided care in any 24-hour period.

9. **Age Range:** Enter the actual and/or anticipated age range of consumers receiving/to receive care.

10. **Type of Facility:** Check type of facility currently under operation. Provide License Number: Current or Application number.

11. **Civil and Criminal Record:** Indicate specific civil and criminal record information.

12. **Attachments:** Review each separate attachment. Complete each attachment as instructed. Attaching additional documentation is required for Attachments A, and D, optional for B and C as you can provide the information on the Attachment form if preferred.

13**. Statement of Responsibilities**: By your signature(s) in item sixteen you are accepting the responsibilities as stated here.

14. **Release of Information:** Read carefully. By your signature(s) in item sixteen, you are agreeing to the statement. Submit information as requested for Limited Liability Company.

15. **Proof of Criminal Clearance:** All individuals involved with facility must have verified criminal clearance, attach copies of acceptable forms as noted or attach fingerprint card(s) or copy(s) of Live Scan form BCII (10/98) to application.

16. **Signatures:** Application must be signed by applicant or authorized person(s). Husband and wife, if joint applicants, both must sign.

State of California
Department of Health Services
Prepared by: Michael Alexander
Phone Number: 657-2576
Reviewed by: Loretta Wallis

Fiscal Forecasting & Data Management Branch
AB 359 Waiver Application ICF/DD-CN
November 16, 2000

FISCAL ANALYSIS OF THE ASSEMBLY BILL 359 WAIVER APPLICATION ICF/DD-CN PLOT PROJECT

Assembly Bill 359 (Chapter 845, Statutes of 1999, Aroner) requires the Department to establish a pilot project to evaluate the safety and fiscal impact of a new level-of-care, the Intermediate Care Facility for Developmentally Disabled-Continuous Nursing (ICF/DD-CN). The bill requires the Department to obtain all necessary federal waivers to implement the program. The Department intends to file an application for a waiver of certain federal requirements under the Medicaid program with the Health Care Financing Administration under Section 1915 (b) of the Social Security Act. This analysis determines the fiscal impact of this new program to establish the cost effectiveness necessary for federal approval of the waiver.

Background

A facility for persons with mental retardation is defined in federal regulation (42 CFR Section 435.1009) as a facility (or distinct part of a facility) that:

1. Is primarily for the diagnosis, treatment, or rehabilitation for persons with mental retardation; and,

2. Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration for health or rehabilitative services to help individuals function at their greatest ability.

In California this program has been classified into subgroups. Two of these subgroups ICF/DD-H (Habilitative) and ICF/DD- N (Nursing), provide clients with community placement in a 4-15 bed facility that allows more involvement in the residential community and the opportunity to gain the necessary skills to participate to the highest degree possible.

With the approval of the federal waiver, California will pilot the creation of another subgroup: ICF/DD-CN (Continuous Nursing). These facilities will provide licensed vocational nursing or registered nursing services on a 24-hour basis. The ICF/DD-CN will provide these services for 4-15 clients in a community-based living arrangement, with preference given to facilities serving 4-6 clients.

Assumptions:

These assumptions were made by program staff based on what they expect to occur in order to maintain a cost-effective waiver. *There is no guarantee that the pilot program will obtain these clients from the cost centers shown in #2 below.* It is Fiscal Forecasting's understanding that the evaluation of this waiver will be designed to determine whether the ICF/DD-CN pilot project truly maintains cost-effectiveness or not.

1. Assume two separate rates for services provided under the ICF/DD-CN Waiver have been established. One rate has been established for ventilator-dependent clients and one rate has been established for non-ventilator-dependent clients. The rates are as follows: Non-vent - $357.03/day and Vent - $387.50/day. The waiver will not cover respiratory therapy.

2. Assume the total number of clients participating in the ICF/DD-CN Waiver will be 60. Assume 18 clients will come from home (these clients will be currently receiving 16 hours of In-Home LVN care each day). Assume 15 clients will be coming from Developmental Centers, three clients from Distinct Part Nursing Facilities, three from Adult Subacute facilities, twelve from Pediatric Subacute facilities, and nine from ICF/DD-Ns.

3. Assume 45 clients will be non-ventilator dependent and 15 clients would be ventilator-dependent.

Calculations:

ICF-DD-CN Waiver

Cost Effectiveness Analysis

Assumptions

Number of Beneficiaries	60	Non Vent	Non VentCosts	Net Waiver Costs	Vent	Vent Costs	Net Waiver Costs
Coming From		Patients	per day	per day	Patients	per day	per day
Home 30%*	18	14	$ 470.56	$ (113.53)	4	$ 470.56	$ (83.06)
Developmental Centers 25%	15	12	$ 364.86	$ (7.83)	3	$ 364.86	$ 22.64
Distinct Part NF 5%	3	3	$ 214.83	$ 142.20	0	$ -	$ -
Adult Subacute 5%	3	3	$ 540.12	$ (183.09)	0	$ -	$ -
Pediatric Subacute 20%	12	7	$ 626.14	$ (269.11)	5	$ 681.58	$ (294.08)
ICF-DD-N 15%	9	6	$ 181.57	$ 175.46	3	$ 181.57	$ 205.93
LVN In-Home Rate	$ 29.41	45		$ (58.60)	15		$ (74.46)
			Total	$ (2,637.06)		Total	$ (1,116.93)
Proposed ICF/DD-CN Rates			Total Savings/day	$ (3,753.99)			
Non Ventilator	$ 357.03		Total Savings/yr	$ (1,370,000)			
Ventilator	$ 387.50						

* Assumes that these patients are children receiving services under EPSDT and currently receiving 16 hours of In-Home LVN Nursing Care each day.

SUMMARY OF FISCAL IMPACT:

Based on the assumptions, this proposed ICF/DD-CN pilot project would provide annual savings to the Medi-Cal program. These annual savings total $1,370,000 ($685,000 GF).